109-381

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 123.

THE TERRE HAUTE AND INDIANAPOLIS RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ISAAC J. STRUBLE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 15, 1880.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the March term, 1880, thereof, between Isaac J. Struble, plaintiff, and the Terre Haute and Indianapolis Railroad Company, defendant, a manifest error hath happened to the great damage of the said The Terre Haute and Indianapolis Railroad Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this tenth day of April, in the year of our Lord one thousand eight hundred and eighty.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.] M. M. PRICE,
Clerk Circuit Court United States,
Eastern District of Missouri,
By A. P. SELBY, *Deputy.*

Allowed by—

SAMUEL TREAT, *Judge.*

1½ *Return to writ.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at office in the city of St. Louis, this 20th day of September, A. D. 1880.

[SEAL.] M. M. PRICE,
Clerk of said Court,
By A. P. SELBY, *Deputy.*

(Indorsed:) No. 1179. United States circuit court, eastern district of Missouri. Isaac J. Struble vs. T. H. & Ind. R. R. Co. Writ of error

to the circuit court of the U. S. east'r' dist. of Missouri. Returned and filed day of , 187 . , clerk.

2 UNITED STATES OF AMERICA, *ss:*

The president of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the March term, 1880, thereof, between Isaac J. Struble, plaintiff, and the Terre Haute & Indianapolis Railroad Company, a manifest error hath happened to the great damage of the said plaintiff, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 13th day of May, in the year of our Lord one thousand eight hundred and eighty.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.] M. M. PRICE,
Clerk Circuit Court United States,
Eastern District of Missouri,
By A. P. SELBY, *Deputy.*

Allowed by—

SAMUEL TREAT, *Judge.*

2½ *Return to writ.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at office in the city of St. Louis, this 20th day of September, A. D. 1880.

[SEAL.] M. M. PRICE,
Clerk of said Court,
By A. P. SELBY, *Deputy.*

(Indorsed:) No. 1169. United States circuit court, eastern district of

Missouri. Isaac J. Struble vs. Terre Haute & Ind. R. R. Writ of error to the circuit court of the U. S. east. distr' of *of* Missouri. Returned and filed day of , 187 , , clerk.

3 The United States of America to Isaac J. Struble, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein the Terre Haute and Indianapolis Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this tenth day of April, in the year of our Lord one thousand eight hundred and eighty.

SAMUEL TREAT,
Judge United States Circuit Court Eastern District of Missouri.

(Indorsed:) 1179. United States circuit court eastern district of Missouri. Isaac J. Struble vs. Terre Haute & Ind. R. R. Company. Citation. Filed April 12th, 1880. M. M. Price, clerk.

4 The United States of America to the Terre Haute and Indianapolis Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein Isaac J. Struble is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this 13th day of May, in the year of our Lord one thousand eight hundred and eighty.

SAMUEL TREAT,
Judge United States Circuit Court Eastern District of Missouri.

(Indorsed:) United States circuit court, eastern district of Missouri. Isaac J. Struble vs. Terre Haute & Ind. R. R. Citation. Filed May 13th, 1880. M. M. Price, clerk.

5 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in and for said district.

Be it remembered that on the 18th day of February, A. D. 1878, there was filed in the office of the clerk of the circuit court of the United States

in and for the eastern district of Missouri a certain transcript of record in words and figures following, to wit:

STATE OF MISSOURI,
City of S. Louis, ss:

Be it remembered that heretofore, to wit, on the 13th day of August, A. D. 1877, there was filed in the office of the clerk of the circuit court a petition and exhibit in words and figures following, to wit:

In the circuit court of Saint Louis County, October term, 1877.

ISAAC J. STRUBLE, PLAINTIFF,
vs.
TERRE HAUTE AND INDIANAPOLIS RAILROAD COMPANY, defendant.

6 Now, on this day came the plaintiff, Isaac J. Struble, and for his cause of action states that the defendant is, and for a long time prior to the year 1870 had been, a corporation duly and legally incorporated and organized under and by virtue of the laws of the State of Indiana; that on or about the month of June, 1870, the defendant leased for a term of more than ten years a line of railway extending from East St. Louis, in the State of Illinois, through Vandalia, in said State, to a point in the boundary line of the State of Indiana, which said line of railway was called and known as the St. Louis, Vandalia and Terre Haute Railroad; and after so leasing said railroad the defendant began to operate, and ever since has operated, and now operates said line of railway, together with its own line of road, and they together constitute one continuous line of railroad from the city of Indianapolis, in the State of Indiana, to and terminating at the city of East St. Louis, in the State of Illinois, a point opposite to the city of St. Louis, in the State of Missouri, and defendant since said lease aforesaid continuously has used in its dealings with the public and plaintiff, to designate said entire line of railway, the name of St.
7 Louis, Vandalia, Terre Haute and Indianopolis Railroad Company, and has since said date, and still has and maintains, an office and place of business in the said city of Saint Louis, and keeps in said office and place of business officers and agents for the transaction of its business in said city of St. Louis.

Plaintiff further states that on or about the 10th day of October, A. D. 1870, defendant, then being in possession and controle of said entire line of railroad, made, in the name of the St. Louis, Vandalia, Terre Haute and Indianapolis Railroad Company, a contract with plaintiff, of which a note and memorandum was then and there made in writing, which said contract and said note and memorandum thereof was, and is, in words and figures as follows, to wit:

This contract and agreement, made and entered into on this the day of , A. D. one thousand eight hundred and seventy, by and between Isaac J. Struble, of the first part, and the St. Louis, Vandalia, Terre Haute and Indianapolis Railroad Company of the second part, witnesseth: that the said Struble agrees and binds himself, for and in consideration of the agreements & stipulations hereinafter mentioned to be performed

8 by the said railroad company aforesaid, to build and keep in good order on his grounds, situated in East St. Louis, county of St. Clair, State of Illinois, being the lands of the Wiggins Ferry Company, leased to Struble, Fredericks & Co. by lease dated Oct. 17th, 1870; also lots leased of Jesse Hoke by said Struble, Fredericks & Co., all necessary stock yards and feeding pens, suitable for the reception, feeding, handling, loading, and unloading of all live stock which may be shipped or transported over said railroad to East St. Louis; to collect all freights & charges in same & pay over to said railroad company, or to its authorized agents, all amounts of monies so collected; to order all cars necessary for the transportation of live stock from East St. Louis from the proper agents of said railroad company; to load in a proper manner all live stock for transportation from East St. Louis by said railroad co.; to bed said cars at a cost to the shippers of said stock of not more than one dollar per car, to be collected by said Struble of said shippers; and to attend to all other necessary matters pertaining to the safe and prompt loading of all such live stock for transportation as aforesaid over the railroad.

9 The said St. Louis, Vandalia, Terre Haute & Indianap'lis Railroad Company, in consideration of the performances of the aforesaid stipulations and agreements on the part of the said Isaac J. Struble, agrees to build all necessary loading schutes for the use of said railroad co. connected with the yards aforesaid, to send all live stock coming to East St. Louis over said railroad to the aforesaid stock yard (except such as is especially ordered otherwise by shippers or owners); to pay said Struble fifty cents per car load for all stock received by him over said road & unloaded in said yards. Said railroad company further agrees to pay said Struble the sum of two dollars for each and every car of live stock loaded by said Struble as aforesaid to be transported by said railroad co. from East St. Louis. Said railroad co. further agrees to give to the said Struble the loading of all live stock which may be transported over the said railroad from East St. Louis. This contract and agreement to be and remain in full force and effect for the term of years from the date herein written.

In testimony whereof the said parties hereto agreeing have set their hands & seals.

10 Plaintiffs says that at the time of making said contract and said note and memorandum thereof it was understood and agreed by and between plaintiff and defendant, the said note and memorandum thereof there made in writing as aforesaid should be signed at once on the part of and for defendant by W. R. McKeen, then and now president of defendant, and that the same should be signed by plaintiff; but plaintiff says that said note and memorandum of said contract, without the fault of plaintiff, remained and was in the possession of the defendant for signature until the first day of September, A. D. 1871, when the same was signed and delivered by defendant, by the name and hand of W. R. McKeen, president, and by plaintiff, and dated on said last-named day instead of the day of making said contract and the note and memorandum thereof as aforesaid. Plaintiff says that from and after the making of said contract and the said note and memorandum thereof the same was in force, and both parties thereto acted thereon and made and received payments under the same, and accepted its provisions. Plaintiff says that said contract as signed as aforesaid is herewith filed, marked "Exhibit A," and

made part hereof. Plaintiff charges that he kept and duly performed all the conditions of said contract on his part up to the month of October, A. D. 1873, and was ready, willing, and able to carry out and comply with all the terms and conditions of said contract until the expiration thereof according to its terms, but plaintiff alleges that he was prevented from carrying out and executing said contract, as will herein be more particularly stated by defendant. Plaintiff charges that by the terms of said contract, and the said note and memorandum thereof, the defendant agreed and promised, in its part, to build all necessary loading schutes for the use of its said railroad company, with the yards aforesaid in said contract mentioned, to send all live stock coming to East St. Louis over said railroad to the aforesaid stock yards, except such as (might be) is specially ordered otherwise by shippers or owners, to pay plaintiff fifty cents per car load for all stock received by him over said road and unloaded at said yards, and said defendant further agreed to pay plaintiff the sum of two dollars for each and every car of live stock loaded by plaintiff to be trans-
12 ported by defendant over said railroad; and the defendants further agreed to give plaintiff the loading of all live stock which (might) may be transported over the said railroad from East St. Louis.

Plaintiff avers that he built, completed, and put into operation the yards in said contract described solely to comply with said contract, and as the consideration therefor on his part that he expended in the construction and completion of said yards, exclusive of the construction of the schutes in said contract mentioned, the sum of twenty-five thousand dollars. Plaintiff says that defendant failed and refused to build all or necessary loading schutes for the use of defendant connected with the yards of plaintiff, but plaintiff was compelled to and did, in order to comply with said contract, build and construct said loading schutes himself, at a cost to plaintiff of one thousand dollars, which amount, together with the interest thereon, is due plaintiff.

Plaintiff further avers, as by said contract and the note and memorandum thereof he agreed to do, that defendant did not send all live stock coming to East St. Louis over said railroad of defendant to the stock yards
13 of plaintiff (except such as was specially ordered otherwise by shippers or owners), but failed and refused so to do whereby plaintiff was deprived of large gains and profits, which would have accrued to him under said contract and the said provision thereof had defendant complied therewith; and plaintiff says that defendant failed and refused to give plaintiff the loading of all or any live stock and to pay two dollars per car therefor transported over its said railroad from East St. Louis, notwithstanding it promised and agreed so to do by the terms of said contract and said note and memorandum thereof, from and after the first day of Oct., A. D. 1873, but excluded plaintiff from such loading without any fault of plaintiff to load said stock and carry out said contract and defendant failed and refused and still fails and refuses to pay plaintiff two dollars per car of live stock to be and which was transported by defendant from East St. Louis over defendant's road. Plaintiff says that he was, has been, and will be deprived of large gains and profits which would have accrued to him under said contract and in the prosecution of the business therein mentioned had
14 he been permitted by defendant to carry out the same. Plaintiff says plaintiff claims that said contract so signed and delivered as aforesaid was to be in force and continue nine years from the signing thereof,

and plaintiff avers that when said contract and said note and memorandum thereof was made by the terms thereof said contract was to be and continue in force for the term of two years, but at the signing thereof nearly one year of the time said contract was to run having expired it was at the time of so signing said contract as aforesaid mutually agreed between plaintiff and defendant that the word "nine" should be, and the same was then and there substituted, in said contract for the word "ten," when the said words designate the time of the continuance of said contract, and the said contract, as signed and delivered and herewith filed, was and is the same contract of which a note and memorandum was made as aforesaid, and is identical therewith in all respects except the date thereof, and the word "nine" instead of the word "ten" changed as aforesaid and the signatures thereto. Plaintiff avers that his said stock yards have by reason of defendant pre-
15 venting plaintiff from carrying out his said contract and by reason of the failure of defendant to comply with the same become valueless and lost to plaintiff, and have been since November, A. D. 1873, and now are worthless.

Whereupon plaintiff says that by reason of the premises, he has sustained damages in the sum of one hundred thousand dollars, for which he asks judgment and for all proper relief.

CHANDLER AND YOUNG,
Attorneys for Plaintiff.

EXHIBIT.

This contract & agreement made & entered into on this the first day of September, A. D. one thousand eight hundred and seventy-one, by & between Isaac J. Struble of the first part, and the St. Louis, Vandalia, Terre Haute and Indianapolis Railroad Company of the second part, witnesseth:

That the said Struble agrees & binds himself for & *in* [and *] consideration of the agreements & stipulations hereinafter mentioned to be performed by the said railroad company aforesaid, to build & keep in good order on his grounds, situated in East St. Louis, county of St. Clair,
16 State of Illinois, being the lands of the Wiggins Ferry Company leased to Struble, Fredericks & Co. by lease dated Oct. 17th, 1870; also lots leased of Jesse Hake by said Struble, Fredericks & Co., all necessary stock-yards & feeding pens suitable for the reception, feeding, handling, loading, & unloading of all live-stock which may be shipped or transported over said railroad to or from East St. Louis aforesaid, to receive & unload all live-stock transported over said railroad to East St. Louis, to collect all freights & charges on same, & pay over to said railroad company or to its authorized agents all amounts of monies so collected, to order all care necessary for the transportation of live-stock from East St. Louis from the proper agent of said railroad company; to bed [said *] at a cost to the shippers of said stock of not more than one dollar per car, to be collected by said Struble of said shipper, and to attend to all other necessary matters pertaining to the safe and prompt loading of all such live-stock for transportation as aforesaid over the railroad. The said St.

* In pencil in original.

Louis, Vandilia, Terre Haute, & Indianapolis Railroad Company,
17 in consideration of the performances of the aforesaid stipulations and agreements on the part of the said Isaac J. Struble, agrees to build all necessary loading schutes for the use of said railroad co. connected with the yards aforesaid, to send all live-stock coming to East St. Louis over said railroad to the aforesaid stock-yards (except such as is specially ordered otherwise by shippers or owners), to pay said Struble fifty cents per car load for all stock received by him over said [road *] & unloaded in said yards. Said railroad company further agrees to pay said Struble the sum of two dollars for each and every car of live-stock loaded by said Struble as aforesaid, to be transported by said railroad co. from East St. Louis; said railroad company further agrees to give to the said Struble the loading of [all *] live stock which may be transported over its said railroad from E. St. Louis.

This contract and agreement to be and remain in full force & effect for the term of nine years from the date herein written.

In testimony whereof the said parties hereto agreeing have set their hands & seals.

I. J. STRUBLE.
W. R. McKEEN,
President.

18 *Statement of summons and return.*

Whereupon a summons issued, directed to the sheriff of the city of St. Louis, which, with his return thereon is in words and figures following, to wit:

19 CITY OF ST. LOUIS,
The State of Missouri, ss:

To the sheriff of the city of St. Louis, greeting:

We command you to summon Terre Haute and Indianapolis Railroad Company to appear before the judges of our circuit court on the first day of the next term thereof, to be held in the city of St. Louis on the first Monday of October next, then and there to answer the complaint of Isaac J. Struble, as set forth in the annexed petition, and have you then and there this writ.

Witness J. Fred. Thornton, clerk of our said court, with the seal thereof hereto affixed at office in the city of St. Louis this 13th day of Aug., in the year of our Lord eighteen hundred and seventy-seven.

[SEAL.] J. FRED. THORNTON, *Clerk.*

Executed this writ in the city of St. Louis on the 20th day of Aug., 1877, by delivering a copy of the writ and petition *is* furnished by the clerk to John E. Simpson, general manager of Terre Haute and
20 Indianapolis Railroad Company, who was in its business office at the time of said service and had charge thereof. The president or any other higher chief officer cannot be found in the city of St. Louis.

JOHN FINN,
Sheriff of the City of St. Louis,
By JAMES MEEGAN,
Deputy.

* In pencil in original.

21 And on the 2d day of October, A. D. 1877, defendant filed his motion to quash writ in words and figures following, to wit:

Motion to quash writ, &c.

Now comes the Terre Haute and Indianapolis Railroad Company, above-named as defendant to said suit, and for the purpose of this motion and for no other enters its appearance and moves the court to quash the writ and to dismiss this suit for the following reasons:

1st. That the said railroad company is not a resident of this State, but a resident of the State of Indiana, the State of its creation.

2d. That said railroad company is a corporation where chief office or place of business is out of this State, to *act*, at the city of Terre Haute, in the State of Indiana.

3d. That the said railroad company has not its chief office or place of business in the said city of St. Louis, but in the said city of Terre Haute, in the State of Indiana.

4th. That the act of the general assembly of this State, approved 1877, purporting to authorize*d* a special class of railroad corporations, to wit, railroad corporations that own or operate roads terminating oppo-
22 site to any point in this State, and which have offices or places of business in this State, to be sued in the same manner as railroad corporations chartered by the State, is un'stitutional, because it is in violation of a' conflict with section 53, article IV, of the constitution prohibiting the general assembly from passing any local or special law regulating the practice or jurisdiction of courts.

THE TERRE HAUTE & INDIANAPOLIS
RAILROAD COMPANY,
By JOHN B. BOWMAN, *Its Att'y.*

And again on the 8th day of November, A. D. 1877, defendant filed its amended motion to quash writ, in words and figures, to wit:

Amended motion to quash writ and dismiss suit.

Now comes the Terre Haute and Indianapolis Railroad Company, named as defendant to said suit, and for the purpose of this motion and for no other pupose enters its appearance and moves the court to quash the writ and dismiss the suit because the court has no jurisdiction of the person of defendant for the following reasons:

1st. Said railroad company is a foreign corporation created by the
23 laws of Indiana, not a resident of this State but of Indiana, and whose chief office or place of business is not in the said city of St. Louis, nor in the State of Missouri.

2nd. The act of the general assembly of the State of Missouri entitled "An act to amend section 2 of chapter 16 of the general statutes of the State of Missouri," approved 17th of April, 1877, laws 1877, p. 369, is unconstitutional and void, because in conflict with and violation of section 28, 34, and 53 of Article IV of the Constitution.

TERRE HAUTE AND INDIANAPOLIS
RAILROAD COMPANY,
By JOHN B. BOWMAN, *Atty.*

24 And at the October term, A. D. 1877, of said circuit court the following proceedings were had in this cause, to wit:

Amended motion to quash writ.

MONDAY, *Nov. 12th*, 1877.

Now at this day the amended motion heretofore filed herein to quash writ being submitted to the court and duly considered is sustained.

And on the 12th day of November, A. D. 1877, plaintiff filed his motion for rehearing in the words and figures following, to wit:

Motion for rehearing.

Now comes said plaintiff and moves the court to set aside the order made in this cause sustaining defendant's motion to quash writ of summons herein & grant a rehearing therein for the following reason: 2nd. Because the court has jurisdiction of defendant as is shown by the plaintiff's petition & service of the writ herein.

CHANDLER AND YOUNG,
Atty's for Pl'ff.

And again, at the said October term, A. D. 1877, of said court, the following proceedings were had in this cause, to wit:

Motion for a rehearing to quash writ sustained.

MONDAY, *Jan'y 7th*, 1878.

25 Now at this day the motion heretofore filed herein for a rehearing on amended motion to quash writ and dismiss suit for want of jurisdiction of the person of defendant being submitted to the court and duly considered is sustained.

Amended motion to quash writ dismissed.

And thereupon the court, being fully advised of and concerning the amended motion to quash writ and dismiss suit for want of jurisdiction of the person of defendant heretofore filed herein, doth order that said motion be and it is overruled.

And on the 8th day of January, A. D. 1878, the following motion for security for costs was filed in this cause, to wit:

Now comes the Terre Haute & Indianapolis Railroad Company, named as defendant to said suit, and for the purpose of this motion, and for no other, entries its appearance, moves the court to rule the said plaintiff by a day and time to be fixed by such rule, to file with the clerk of said court a written undertaking of some person satisfactory to this court, a resident of this State, whereby such person shall acknowledge himself bound to pay all costs accrued and which may accrue in said action, and in case of failure on part of plaintiff to comply with such rule to dismiss the
26 said cause of plaintiff because the said plaintiff was at the time of

the commencement of said suit, *was*, ever since, and yet is a non-resident of this State.

TERRE HAUTE & INDIANAPOLIS
RAILROAD COMPANY,
By JOHN B. BOWMAN, *Its Att'y.*

STATE OF MISSOURI,
City of St. Louis, ss:

John B. Bowman, duly sworn upon his oath, says that he knows Isaac J. Struble, the plaintiff in the action entitled Isaac J. Struble against Terre Haute & Indianapolis Railroad Company, depending at the circuit court of the city of St. Louis aforesaid, at the Dec. term, 1877, and that the said Struble, at the time of the first commencing of said action in said court, and ever since then, was and yet is a resident of either the State of New York or New Jersey, and a non-resident of this State.

JOHN B. BOWMAN.

Subscribed and sworn to before me this 8th January, A. D. 1878.
[SEAL.] J. FRED. THORNTON, *Clerk.*

27 And afterwards, on the 22d day of Jan'y, A. D. 1878, the following petition and bond for removal of this cause to United States circuit court for the eastern district of Missouri was filed, to wit:

Bond.

Know all men by these presents that the Terre Haute and Indianapolis Railroad Company, a corporation organized under the laws of the State of Indiana, as principal, and Cassius C. Cobb, as surety, are held and firmly bound into Isaac J. Struble in the penal sum of five hundred dollars, lawful money of the United States, for the payment of which will and truly to be made the said principal and surety are bound jointly and severally by this' presents.

The condition of this obligation is such that if the said Terre Haute & Indianapolis Railroad Company enters in the circuit court of the United States in and for the eastern district of the State of Missouri, at its next session, and on the first day of such session a copy of the record in the suit of said Isaac J. Struble against said Terre Haute and Indianapolis Railroad Company, now pending in the circuit court of St. Louis,
28 State of Missouri, and which said suit said Terre Haute and Indianapolis Railroad Company desires to remove to said circuit court of the United States, and has made, and now files, its petition for such removal; and, further, if said Terre Haute and Indianapolis Railroad Company prays all cost that may be awarded by said circuit court of the United States if said last-named court shall hold that such suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and effect in law.

Witness the signature of the said Terre Haute & Indianapolis Railroad Company by its president and its corporate seal hereunto affixed and at-

tested by its secretary, and the hand and seal of said , this 21st day of January, A. D. 1878.

[SEAL.] TERRE HAUTE & INDANAPOLIS RAILROAD COMPANY,
By W. R. McKEEN, *Pres't.*
Attest: W. H. BUCKINGHAM, *Secretary*

C. C. COBB. [SEAL.]

Approved in open court this 22d day of January, 1878.
Attest: J. FRED. THORNTON, *Clerk.*

29 STATE OF MISSOURI,
City of St Louis:

I, Cassius C. Cobb, of said city, the surety named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Missouri and a property holder therein; that I am worth the sum of five hundred dollars over and above all my debts and liabilities and exclusive of property exempt by law from execution; that I have property in the State of Missouri liable to execution of the value of more than five hundred dollars.

C. C. COBB.

Subscribed in my presence by Cassius C. Cobb and by him sworn to before me this 22d day of January, A. D. 1878.

J. FRED. THORNTON, *Clk.*

Petition for removal to the circuit court of the United States, eastern dist. of Missouri.

In the circuit court of the city of St. Louis, State of Missouri.

ISAAC J. STRUBLE
vs.
TERRE HAUTE AND INDIANAPOLIS RAILROAD Company.

To said circuit court:

Your petitioner, the Terre Haute and Indianapolis Railroad
30 Company, respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled (cause) suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that the petitioner was at the time of the commencement of this suit and still is a citizen of the State of Indiana, and that Isaac J. Struble, the plaintiff in said suit, was at the time of its commencement and still is a citizen of the State of New Jersey.

And your petitioners offers herewith a bond with good and sufficient surety for his entering in said circuit court of the United States on the first day of its next session a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

And your petitioner prays this honorable court to proceed no further

herein except to make the order of removal required by law and to accept said surety and bond and to cause the record herein to be removed into said circuit court of the United States in and for the eastern dis-
31 trict of Missouri and your petitioner will ever pray.

TERRE HAUTE AND INDIANAPOLIS
RALROAD COMPANY,
By JOHN B. BOWMAN, *Its Att'y.*

STATE OF MISSOURI,
City of St. Louis, ss:

I, John B. Bowman, being duly sworn, upon *upon* my oath depose and say, that I am the attorney of the petitioner in the above-entitled suit (cause), that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

JOHN B. BOWMAN.

Subscribed and sworn to by John B. Bowman, before me, this 22d day of January, A. D. 1878.

J. FRED. THORNTON, *Clerk.*

STATE OF MISSOURI,
City of St. Louis, ss:

I, J. Fred. Thornton, clerk of the circuit court, do hereby certify the foregoing to be a true, full, and complete transcript of the record and proceedings in the above-entitled cause as fully as the same remain on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis, this twenty-ninth day of Jan'y, A. D. 1878.

J. FRED. THORNTON, *Clerk.*

32 And, afterwards, to wit, on the 16th day of September, A. D. 1878, there was filed in said cause a demurrer to petition in words and figures following, to wit:

In the circuit court of the United States for the eastern district of Missouri, to the Sept. term, A. D. 1878.

ISAAC J. STRUBEL, PLAINTIFF,
vs.
TERRE HAUTE & INDIANOPOLIS RAILROAD COMPANY, defendants.

Suit to recover damages for breach of contract, removed into this court from the circuit court of the city of St. Louis.

The defendant demurs to the petition, and assigns the following grounds of demur'er:

1st. The petition does not state facts sufficient to constitute a case of action, in this—

33 First. It is alleged that defendant agreed to built all necessary

loading scheut's for the use of its railroad with plaintiff's yards; while it is not averred that any such schut's were necessa'y.

Second. It is alleged that defendant agreed to send all live-stock coming over its railroad to E. St. Louis to the stock-yards of plaintiff, except such as might be specially owned otherwise by the shippers or owner, to pay plaintiff cents per car-load for all stock received by plaintiff over the road of defendant and unloaded by plaintiff at his yards; while it is not aver'ed that any live stock came to E. St. Louis over defendant's road than such as were ordered by the shipper, or ordered to be otherwise delivered or unloaded.

Third. It is alleged that defendant agreed to pay plaintiff two dollars per car of live-stock loaded by plaintiff to be transported by defendant over its road; while it is not aver'ed that any live-stock was loaded by plaintiff, or that defendant transported any live-stock over its road from E. St. Louis.

34 Fourth. It is alleged that defendant agreed to give plaintiff the loading of all live-stock which might be transfer'ed over its road from E. St. Louis; while it is not aver'ed that any live-stock was transported over defendant's road from E. St. Louis.

Fifth. It is alleged that plaintiff built and put in operation the yards in the supposed contract mentioned, but it is not aver'ed whether the yards were built prior or subsequent to the supposed execution of the contract by the defendant. From the nature of the allegations in the petition we are to presume the yards were built prior to the supposed execution of the contract by the defendant, and, if so, the contract having been for ten years as alleged, it is void under the statute of Indiana, where it is alleged to have been made.

Sixth. The damages claimed under the averments of the petition are *mear*ly speculative.

2d. The court has no jurisdiction of def't. Said railroad company is a foreign corporation, created by the laws of Indiana, not a resident of
35 this State, but of Indiana, and whose chief office and place of business is not in the said city of St. Louis, nor in the State of Missouri.

3d. The act of the general assembly of the State of Missouri entitled "An act to amend section 2 of chapter 164 of the General Statutes of the State of Missouri," approved 17 April, 1877, laws 1877, p. 369, is unconstitutional and void, because in conflict with and violative of sections 28, 34, and 53 of article 4 of the constitution.

TERRE HAUTE AND INDIANAPOLIS RAILROAD COMPNY,
By JOHN B. BOWMAN with
R. F. WINGATE,
Att'y' for Def'ts.

36 And afterwards, to wit, on the 7th day of December, A. D. 1878, the following further proceedings were had and appear of record in said cause, to wit:

ISAAC J. STRUBLE, PLAINTIFF,
vs.
TERRE HAUTE AND INDIANOPOLIS RAILROAD Co., defendant. } 1179.

Now comes the parties by their attorn'y, and the court having examined

the questions of law arising upon the demurrer of defendant to the petition, and being fully advised thereof, finds the law thereon for the plaintiff. It is therefore ordered that said demurrer be overruled, and thereupon, on motion, leave is granted said defendant to plead within ten days.

37 And afterwards, to wit, on the 17th day of December, 1878, the following answer was filed in said cause, to wit:

In the circuit court of the United States, eastern district of Missouri.

ISAAC J. STRUBLE, PLAINTIFF,
vs.
TERRE HAUTE AND INDIANOPOLIS RAILROAD COMPANY, DEFENDANT.

Suit for damages for breach of contract. To this court removed from the circuit court of the city of St. Louis.

The Terre Haute and Indianopolis Railroad Company, made defendant in the above-entitled cause by leave of court to that end first had and obtained, for answer to the petition of plaintiff denies each and every statement and averment and every part thereof in said petition con-
38 tained as therein stated or otherwise, save as hereinafter stated, admitted, or qualified.

And for further answer it admits that it is, and for a long time prior to A. D. 1870, it has been, a corporation created by the laws of the State of Indiana.

It further admits that at the time of the commencement of the suit herein, and for a long time prior thereto, it operated a line of railway extending from East St. Louis, in Illinois, through Vandalia, in said State, to a point in the boundary line of Indiana, and that said line of railway so operated by it was called and known as the St. Louis, Vandalia and Terre Haute Railroad, and that it *is* so operated the same together with its own line of road, and they together constituted one continuous line of railroad from the city of Indianapolis, in Indiana, to and terminating at the city of East St. Louis, in Illinois, a point opposite to the city of St. Louis, in the State of Missouri.

But it states and avers that it had no office of any kind for the transaction of business in the city of St. Louis aforesaid in the month of June, A. D. 1870, but that in the month of July, A. D. 1870, and not
39 before then, it established and from that time hitherto it has had a ticket and freight office in said city of St. Louis, and kept agents therein for the transaction of its passenger ticket and freight business; and further states, avers, and pleads that its chief office and place of business in the month of June, 1870, was, and thence hitherto has been, in the city of Terre Haute, in the State of Indiana; and for further answer it says that it is not true, as in the petition alleged or otherwise, that it, on or about the 10th day of October, A. D. 1870, or at any other time, in the name of the St. Louis, Vandalia, Terre Haute and Indianapolis Railroad Compa'y, or otherwise, made a contract with plaintiff; and also says that it does not know, neither has it information sufficient to form a belief, whether the said note or memorandum in the petition described and set out

of any such supposed contract was at any time made in writing or otherwise, but it says that it did not make, sign, or deliver the said note or memorandum described and set out in the petition, and that the said note or memorandum was not made, signed, or delivered by any person thereto lawfully authorized by it, and that plaintiff did not deliver the same
40 to it or to any one lawfully authorized to receive the same for it.

And for further answer it says that it was not understood by and between it and plaintiff that the said note or memorandum of any or the supposed contract in said petition described should be signed at once or at any other time for it or on its part by W. R. McKeen or by any other person, or that any such note or memorandum or the said note or memorandum should be signed by plaintiff, and says that said note or memorandum of said supposed contract in the petition described did not remain and was not in the possession for signature until the 1st day of September, A. D. 1871, or at any other term.

And further answer says that it did not sign or deliver to plaintiff the said paper writings in the petition described and therewith filed as Exhibit A thereto, and made a part thereof; and that the same was not signed or delivered to plaintiff by it or by any one thereunto lawfully authorized.

And further answer says that it is not true, as in the petition alleged or otherwise, that from and after the alleged making of said supposed contract or the alleged making of said supposed note and memoran-
41 dum in writing thereof the same was in force, or that both parties alleged to be parties thereto acted thereon or made or received payment under the same, or accepted of the provision, condition, or terms thereof.

And for further answer says, avers, and pleads that the plaintiff did not keep or duly perform all the conditions of said supposed contract up to the month of October, A. D. 1873, as in the petition alleged, and that plaintiff was not ready, willing, or able to carry out or comply with all the terms and conditions of said supposed contract until the time of its alleged expiration according to the alleged terms thereof, as in the petition stated or otherwise, and that plaintiff was not prevented by it from carrrying out or executing said supposed contract as stated in the petition.

But it says that on or about the first day of October, A. D. 1872, one Frund C. Cox, claiming under plaintiff, took, held, and continued to hold the exclusive possession of the stock-yards in said petition described, located and established upon land leased by plaintiff from the Wiggin Ferry Company and from one Hoke, as lessors, as in said petition stated, until the 31st day of October, A. D. 1873.

42 And it says that prior to said last-named date, to wit, on the 17th day of October, 1873, said Hok, as said lessor of part of the land upon which said stock-yards were located and established as stated in said petition and described in said supposed contract, for the non-payment of rent determined, as he had a right to do, plaintiff's other said lease to said land by notice in writing to that effect given and served as required by law; and that on the 20th day of October, A. D. 1873, said Wiggins Ferry Company, a corporation, as lessor of the other said land upon which said stock-yards were located and established, as in said supposed contract stated, for the non-payment of rent determined, at it had a right to do, plaintiff's said lease to said other land, by notice in writing to that effect given and served as required by law.

And that thereupon, to wit, on the 31st day of October, A. D. 1873, they, to wit, said Hoke and said Wiggins Ferry Company, severally recovered the actual possession of the said land respectively, together with the said stock-yards thereupon, to the exclusion of plaintiff; and that thereupon the said Hoke and said Wiggins Ferry Company, to wit, on
43 said 31st day of October, 1873, took actual possession of the same, and thenceforth conducted and carried on the business of a stock-yard upon said premises for their sole use and exclusive benefit. And for further answer says it is not true that plaintiff built, completed, and put into operation the stock-yards in said supposed contract described, solely or otherwise, to comply with said supposed contract, and as the alleged consideration therefor on his part, as in the petition alleged, and that he did not expend in the construction and completion of said stock-yards, exclusive of shutes, twenty-five thousand dollars, as in the petition stated; and that it is not true that plaintiff, in order to comply with said supposed contract, built and constructed any loading shutes at a cost to him of $1,000.00 or any other sum, or that any sum of money whatever for the building by plaintiff of any loading-shutes is due him from it; and that it is not true that it failed or refused to send any live stock coming over the said railroad so operated by it to East St. Louis to said stock-yards ("except such as was specially ordered otherwise by shipper or owner;") and that it is not true that it
44 failed or refused to give plaintiff the loading of any live stock transported or which was to be transported over said railroad from East St. Louis the loading of which was subject to its control, or that it failed or refused to pay plaintiff for any live stock loaded by him for transportation over said railroad; and that it is not true that plaintiff has been or will be deprived of large or any gains and profits whatever, which would have accrued to him under said supposed contract, or in the prosecution of the business of plaintiff therein mentioned, by any act or failure on its part. And for further answer says that it is not true that by any fault of it plaintiff was prevented from carrying out said supposed contract, or that by any fault of it said stock-yards became valueless and lost to plaintiff and worthless, as in said petition alleged. And for further answer it says and avers that said stock-yards were not built, constructed, established, or put into operation by plaintiff in his own right, nor for his own and individual use and benefit, but that the same were so built and put into operation on the 1st day of September, A. D. 1871, and long
45 prior thereto, by Struble, Frederick & Co., a copartnership composed of plaintiff, Phillip E. Frederick, & George V. Bartlett, or by Struble & Frederick, a copartnership composed of plaintiff and Phillip E. Frederick; and that said stock-yards were located upon land then and there under said leases from said Wiggin Ferry Company and said Hoke, held by said Struble Frederick & Co. and said Struble and Frederic, respectively, the said ferry company having leased a part thereof to said Struble, Frederick & Co. and the said Hoke having leased the other part to said Struble & Frederick; and that on or about the first day of October, A. D. 1872, plaintiff surrendered the possession of said stock-yards and the business thereat and in connection therewith to one F. C. Cox, who then and there thenceforth possessed the same and transacted the business thereof, including the receiving of live stock

coming thereto from over said railroad and the loading &c., of live stock to be transported over said railroad from East St. Louis, and that long prior to the 1st day of October, A. D. 1873, plaintiff had parted with all interest he at any time had in the business of said stock-yard.

46 And for further answer says and avers that the said stock yards and the lands whereupon they were built, constructed, and put into operation were not at any time contiguous to any tract, right of way, or other lands or possession owned, possessed, or operated by said Terre Haute and Indianopolis Railroad Company, but were far distant therefrom and accessible for connection with any tract, right of way, or other lands or possession of said railroad compa'y only through the medium of another railway, to wit, that of the Ohio & Mississippi Railway Compa'y.

TERRE HAUTE & INDIANAPOLIS
RAILROAD COMPANY,
BOWMAN & WINGATE, *Attorneys.*

STATE OF MISSOURI,
City of St. Louis, ss:

John E. Simpson, duly sworn, upon his oath deposes and says that he now is and for more than seven years last past has been the general manager or general superintendent of the business of the Terre Haute and Indianopolis Railroad Compa'y, and as such a recognized general officer of said compa'y, to wit, since July, A. D. 1871, and that the above

47 answer to the petition in the above-entitled suit and the matters and things in said answer stated are true.

JOHN E. SIMPSON.

Subscribed & sworn to before me this 17th day of December, A. D. 1878.

[SEAL.] I. D. FONLON,
Notary Public, City of St. Louis, Missouri.

My commission expires July 30th, 1881.

48 And afterwards, to wit, on the 19th day of December, 1878, the following motion to compel defendant to reform its answer was filed in said cause, to wit:

In the circuit court of the United , eastern district of Missouri.

ISAAC J. STRUBLE, PLAINTIFF,
vs.
TERRE HAUTE AND INDIANAPOLIS RAILROAD COMPANY, defendant.

Now at this day comes the plaintiff and moves the court to refuse defendant to reform the *the* answer in the above-entitled cause so as to make the several pleas therein contained consistent and logical, for plaintiff

49 says that defendant has by his first answer and plea denied under oath that it ever executed the contract sued, thereby ple'ding non est factu*n*, and defendant in the several subsequent pleas to plaintiff's petition confesses said contract, and seeks to avoid an action thereon by another wholly contradictory of his first plea; and plaintiff says that all of defend-

ant's answer after defendant's plea of non est factum is redundant and irrelevant matter, and is not a defence to plaintiff's cause of action.

JEFF. CHANDLER & S. A. YOUNG,
Att'ys for Plaintiff.

50 And afterwards, to wit, on the 25th day of April, 1879, the following further proceedings were had and appear of record in said cause, to wit:

ISAAC J. STRUBLE, PLAINTIFF,
vs.
TERRE HAUTE AND INDIANAPOLIS RAIL. CO., defendant.

Now come the parties by their attorneys, and the court having considered the plaintiff's motion to compel defendant to reform its answer, and being fully advised thereof, orders that said motion be, and the same is hereby, overruled.

51 And afterwards, to wit, on the 28th day of April, 1879, the following replication was filed in said cause, to wit:

ISAAC J. STRUBLE
vs.
TERRE HAUTE & INDIANOPOLIS RAILROAD Company.

In the United States circuit court for the eastern district of Missouri.

Now at this day comes the plaintiff, and for reply to defendant's answer and the new matter contained therein, denies each and every allegation of new matter in said answer contained.

JEFF. CHANDLER,
Att'y for Plaintiff.

52 And afterwards, to wit, on the 30th day of March, A. D. 1880, at a regular stated term of said court, the following further proceedings were had and appear of record in said cause, to wit:

ISAAC J. STRUNBLE
vs.
TERRE HAUTE & INDIANAPOLIS R. R. CO.

Now come the parties by their attorneys, the plaintiff by Messrs. Lee & Chandler, and the defendant by Messrs. Bowman & Wingate; and this cause being regularly called for trial, and both parties being ready, it is ordered that a jury come; and thereupon come said jury, to wit, W. F. Austin, Thomas C. Taylor, A. McClernay, P. B. Linville, John D. C. Taylor, W. H. Murphy, Joseph W. Givens, John M. Baily, Lemuel G. Pardee, G. F. McMahan, Lewis A. Hayward, and Samuel Murphy, twelve good and lawful men, duly empannelled and sworn well and truly to try the issues joined herein; and thereupon the evidence in this case was

heard in part, but not being concluded at the hour of adjournment, it was ordered that further proceedings herein be continued until to-morrow morning at ten o'clock.

53 And afterwards, to wit, on the 5th day of April, A. D. 1880, the following further proceedings were had and appear of record in said cause, to wit:

ISAAC J. STRUBLE, PLAINTIFF,
vs.
THE TERRE HAUTE AND INDIANOPOLIS RAILROAD COMPANY, defendant.

Now again come the parties by their attorneys, the plaintiff by Messrs. Lee and Chandler, and the defendant by Messrs. R. F. Wingate and J. B. Bowman, and also come the jury herein, as on yesterday, to wit, W. F. Austin, Thomas C. Taylor, A. McCheny, P. B. Linville, John D. C. Taylor, W. H. Murphy, Samel Murphy, Joseph W. Givins, John M. Bailey, Lemuel G. Pardee, G. F. M. Mahan, and Lewis A. Hayword, who, after hearing the evidence and arguments of counsel and receiving the charge of the court, now return the following verdict: "We, the jury, find for the plaintiff in the sum of ten thousand four hundred and forty dollars ($10,440.00). Philip B. Linville, foreman."

It is therefore considered by the court that the plaintiff, Isaac J. Struble, have and recover of the defendant, the Indianopolis and St. Louis Railroad Company as well the said sum of ten thousand four hundred and forty dollars, the damages aforesaid by the jury *issued*, as also the
54 costs herein laid out and expended, and have thereof execution.

55 In the circuit court of the United States for the eastern district of Missouri.

ISAAC J. STRUBLE, PLAINTIFF,
vs.
TERRE HAUTE AND INDIANAPOLIS RAILROAD COMPANY, defendant.

Be it remembered that at the October term, 1877, of the circuit court of the city of St. Louis, in the State of Missouri, where the above cause was then pending, to wit, on the 8th day of November, 1877, defendant filed its amended motion to quash the writ and dismiss the suit, in words and figures following, to wit:

(See page .)

And on the 12' day of November, 1877, during said term of court, said amended motion coming on to be heard, was sustained; and that hereafter, on the said 12th day of November, 1877, plaintiff filed his motion for a rehearing and setting aside of said order sustaining said motion, and that on the 7th day of January, 1878, during said October term of said court, plaintiff's said motion coming on to be heard, he was sustained, and defendant's amended motion to quash the writ and dismiss the suit
56 was then and there by the court overruled, to which ruling of the court the defendant then and there excepted.

Be it further remembered that on the day of , 187 , the defendant filed its demurrer in said circuit court of the United States for the eastern district of Missouri, to plaintiff's petition, which demurrer is in words and figures, as follows:

(See page .)

Which said demurrer afterwards, on the day of , 187 , coming on to be heard before the Hon. Samuel Treat, judge, holding said court, the same was by the court overruled, to which ruling and judgment of the court overruling the demurrer the defendant at the time excepted.

And afterwards said cause came on to be tried, at the March term, 1880, of said United States circuit court, before the Hon. George W. McCrary, circuit judge, and Samuel Treat, district judge, sitting in said circuit court, and a jury, when the following proceedings were had, to wit:

The plaintiff to maintain the issue on his part offered evidence as follows:

JOHN E. SIMPSON, sworn for the plaintiff, testified in substance as follows:

57 I am the general manager of the Terre Haute and Indianapolis Railroad Company at St. Louis. I am not able to state the number of cars of live stock shipped from East St. Louis over the railroad line of the company since 1873. I know the signature of Mr. McKeen. The signature to the paper now handed to me, being dated the first day of September, A. D. 1871, and signed Isaac J. Struble, W. R. McKeen, pres't, I believe to be his; it looks like it; he is the president of the Terre Haute and Indianapolis Railroad Company, and has been since 1867. Besides its own road, the defendant operates the St. Louis, Vandalia and Terre Haute Railroad and the Terre Haute and Logansport Railroad; it operates a continuous line of railroad from East St. Louis to Indianapolis, and has continued to do so since June or July, 1870; it does business under the name of the Terre Haute and Indianapolis Railroad Company; in advertising it is called the Vandalia Line; it does not call itself "the St. Louis, Vandalia, Terre Haute and Indianapolis Railroad Company." We do not use letter heads of that character in the transac-

58 tion of our business. (The witness, being handed a letter, dated July 7th, 1874, stated:) Those letter heads were used at one time, but the company did not use them in the transaction of its business.

Question (by plaintiff's counsel). "Did its officers?"

Answer. "Yes, sir."

(Defendant's counsel objected to the question as leading and the answer as incompetent, which objections were overruled by the court, to which ruling of the court the defendant at the time excepted.)

(The witness, being handed a paper dated November 8th, 1872, proceeded:)

This is one of the passes used by our company; the letters printed on it, "Gen. Sup't St. L., V., T. H. & I. R. R.," means general superintendent of the St. Louis, Vandalia, Terre Haute and Indianapolis Railroad; the signature to the paper is mine; at its date I was acting as general superintendent of the Terre Haute and Indianapolis Railroad, and have done so continuously since July 1st, 1871, and knew of the existence of those

passes; they were gotten up in connection with the Illinois Central as a joint live stock pass, with my assent and knowledge; the passes were not good from Terre Haute to East St. Louis; these passes
59 were used between East St. Louis and Effingham; the general superintendent has charge of the operating department of the road; he makes an annual report to the president; the business of the company is reported from the stations to the president once a year, and the president reports to the board of directors; after a pass has been used it goes to the auditor of the company, who keeps a record of the passes, who they are issued by, and between what points used; the auditor has charge of the accounts, the reports of business are made by the agents to him, and he keeps an account with persons he does business with; in the shipment of stock from East St. Louis, the reports of agents show when stock is loaded and the places of shipment; an agent's report of stock shipped at the National Stock Yards would show that it was loaded at East St. Louis. The auditor is elected by the board of directors. Could not state the number of passes issued—they are issued by the agents; blank passes are signed by me and delivered to the agents, and they countersign them. (Bills of lading being handed to him, witness proceeded:)

60 I have seen papers similar to these before; such papers were used by some of the company's agents; could not say during what time. When we find agents using not the proper name of the company we correct it. I used the name mentioned in the bills of lading handed to me in 1872 on these stock passes; never prior to that time; these passes were gotten up by the Illinois Central in Chicago, and sent on here and used with my assent. I know these blanks for cars now handed me, "Loaded Struble Stock Yard, St. L., V., T. H. & I. R. R., from East St. Louis to Indianapolis." Hibbard was our general freight agent, and has been since 1868 continuously; his headquarters in 1868 were in Indianapolis; I don't know what time he moved here; my best recollection is it was in 1873 or 1874. Mr. Hibbard has charge of the freight rates and making contracts for freights in a general way; it is his business to know whose freight is shipped, the kind, and the amount of it; of course he can't keep tract of it all; it is his business to look after it. East St. Louis is an important station as to the shipment of stock.

61 Question (by plaintiff's counsel). State whether all the stock up to 1873 did not come from the Struble yards.

(Defendant's counsel objected to the question as incompetent. The court overruled the objection, and permitted the witness to answer for the purpose of bringing home the knowledge of the printed blanks to the defendant. To the ruling of the court the defendant at the time excepted and witness answered.)

I could not say without an examination. My impression is that we did all the stock business of our road at the Struble yards, as long as there was any stock there, to about 1873 up to the time stock ceased to go there, when the national yards were completed; I don't know whether it was in 1873 or 1876. I was stationed at the other end of the road, at Indianapolis. C. M. Bacon was the local agent of the defendant at East St. Louis June 21st, 1872, and was such agent there for several years. I know Mr. Stevens; he has been an officer of our road; he is not now; I cannot; *I cannot* give (the year when his agency commenced or ended; it was

62 during the years 1872, 1873, or 1874; I could not state within two years when it ended; his duties were of a general nature; he was the general agent of the road here.

Cross-examination by defendant's counsel:

I say that Mr. Stevens authority was general. What I mean is, both passenger and freight matters; he was not limited to any particular line of business; he derived his authority from the president; was appointed a subordinate officer by the president. I know where the Struble yards are located; I can't give their distance from the Vandalia road; we had to reach them over the track of the Ohio & Mississippi Railroad Company; they were a mile or more from the Vandalia road. During the years that Struble's yards contained stock our road carried most of its stock. I cannot state when we quit going to the the Struble yards for stock without an examination. My office was located at Indianapolis at the time; we changed it about four years ago. The auditor of the road has always been located at Terre Haute. The general offices and place of business, the books, papers, and records are kept at Terre Haute, Indiana. The audi-
63 tor is not a subordinate officer; he is, like myself, on the staff of the president. The board of directors is the governing body of the company—the Terre Haute & Indianapolis Railroad Company; the board elects the president. John W Coulogne was here in charge as superintendent of the companies' affairs in 1870, and continued until the 1st of July, 1871. I cannot say that any one succeeded him; he was division superintendent, and the office was abolished and the duties that he had performed devolved on me; I was in Indianapolis in October, 1870, and also in November, and remained there until 1876. I did not take charge of of this end of the line until July, 1871.

Redirect examination:

The president is a member of the board of directors.

(Mr. Bowman, of defendant's counsel, admitted that the president is the chief executive officer of the company.)

2d. N. S. McKeen, being sworn on behalf of plaintiff, testified:

I am stock agent of the Terre Haute and Indianapolis Railroad Company, located at the National Stock Yards at St. Clair County,
64 Illinois. I don't know whether they are in East St. Louis or not. They are near East St. Louis or in it. My business is to solicit stock and see that it is properly billed and looked after. I have been such stock solicitor since the 23d of August a year ago; we have kept impression copies of stock shipped over our road since, I think, the 14th day of December, two years ago, and could tell by examining them how many cars of live stock shipped from the National Stock Yards. I have nothing to do with East St. Louis at all. I bill from the National Stock Yards. I ship none from East St. Louis. I can tell you what we billed out from the National Stock Yards; I can give you that from memory. I have nothing to do with East St. Louis; we have a bridge station called East St. Louis; our next station east is Hunter's, about 8 miles out from East St. Louis. The National Stock Yards are a mile and a half or two miles from our freight depot in East St. Louis. Stock that is consigned to East St. Louis goes down to the agent at East St. Louis; some of it is

unloaded there, and some of it is delivered to the National Stock Yards.

65 (Defendant's counsel objected to extending the inquiry beyond the time between October 1st, 1873, and the time plaintiff claims the yard became useless to him. The court overruled the objection, to which ruling of the court the defendant at the time excepted.)

(The witness, proceeding, said:) We had a book in our office—a pencil memorandum—that showed the amount of stock shipped from the National Stock Yards prior to two years ago; I looked for this book and could not find it; it was taken to Belleville; I have no means of telling accurately; I can produce a memorandum of that shipped in the last two years. That part of the stock shipped over our road intended for this side of the river (St. Louis, Mo.), and for the Union Stock Yards is unloaded at East St. Louis, and that intended for the National Stock Yards is sent up to the National Stock Yards; I think it is named in the bill of lading where it goes to; it goes to East St. Louis before going to the stock yards—that is the nearest station; there are no other stock yards in connection with the East St. Louis station, except that there are loading places for loading horses and mules.

66 Plaintiff asked the following question: "State the number of cars of live stock within the last two years that you have shipped."

(Defendant's counsel objects to the question as incompetent. The court overruled the objection, to which ruling of the court the defendant at the time excepted.)

The witness answered: "4,371 cars for the year 1878; from the National Stock Yards; for the year 1879, 4,801."

Our books show an increase in the transportation of live stock; it has only been getting better since I have been there; I can't tell the amount I saw on the book; it covers three or four years; I can't remember the figures; I don't think any record was kept previous to 1875. From 1875 to 1878 I should think something like 7,500 cars, and I am not certain about these; I have reference to the year 1874, 1875, 1876, and 1877; if I don't include 1874 it would not be so much—probably 6,000 or 6,300 cars, and last year 4,801 from the stock yards.

Plaintiff's counsel asked the following question: "Is it your opinion, with the business facilities which you have for transporting stock,

67 that business will increase in the future about the same ratio?"

(Defendant's cousel objected to the question as incompetent, and the court sustained the objection, to which ruling of the court the plaintiff at the time excepted.)

Cross-examination:

I have arrived at the statement that during the year 1878 there were 4,371 cars of stock shipped over the Terre Taute and Indianapolis Railroad from the National Stock Yards, from a record kept myself, and 4,801 cars in 1879 are from the same record. Stock which came over the Vandalia road billed to East St. Louis, was run to the station at East St. Louis first, and it is sent from there to the stock yards, probably within an hour after it comes in. Some of it was consigned to East St. Louis in order to reach the Union Stock Yards in St. Louis (Mo.), and is unloaded at the East St. Louis station and driven across the river; that consigned to the National Stock Yards goes there; and in order to reach the National

Stock Yards it goes to East St. Louis. I think the National Stock Yards are outside of East St. Louis; I know that parties that board at the Allerton House, which is on the stock-yard ground, were not allowed to
68 vote at East St. Louis; the Allerton House is nearer to East St. Louis than the stock yards proper, within probably what I understand to be one hundred and fifty feet of the St. Clair County road, and the stock yards are still further away. There have been a few cars of stock shipped over this railroad loaded elsewhere than at the National Stock Yards; at East St. Louis they were loaded right on the platform—horses and mules; I think there was one car load the day before yesterday. Since this suit was commenced on the 13th of August, 1877, I have seen considerable stock coming out from there, and some being loaded; I have been connected with the railroad company as stock agent six years the 20th day of the coming April; I know where the Struble yards used to be; there are no yards there now; I think there has been none there since 1874; I am not certain; I don't know anything about the shipment of stock from East St. Louis prior to the 20th of April, 1874. All of the stock shipped from the National Stock Yards during 1875, 1876, 1877, 1878, and 1879 were loaded at the National Stock Yards. I don't
69 know anything about the transaction of business at the East St. Louis station proper; I have nothing to do with the station; what I know about shipments there is from seeing stock loaded, and I saw it frequently coming out on the trains. The first station out from East St. Louis on the Vandalia road is the National Stock Yards; it is on a spur; it is connected by a track—the Venice switch or spur; it is directly connected with the Vandalia, Terre Haute, and Indianapolis Railroad by its own track. The National Stock Yards is the first station where the road does business outside of East St. Louis (the next station is Hunter's); it is about a mile and a half or two miles from the main station; it is not a passenger station, but simply for the stock-yard business; there is no other class of business done there by us; the connection between the main line—the Terre Haute and Indianapolis Railroad—and the stock yards does not require us to run over any other road. The National Stock Yards are directly on the track of the Vandalia, Terre Haute, and Indianapolis Railroad.

Redirect examination:

70 This spur was the only track we had; Hunter's station is really no station; it is just a siding. This spur is two miles from East St. Louis; it runs just down to the stock yards; there is no depot of any kind there, where we take passengers or put them off, or take freight, or bill freight from; I don't know whether this switch is within the corporate limits of East St. Louis or not.

Plaintiff's counsel here offered in evidence the paper shown witness, dated September 1, 1871, as being Exhibit A filed with this suit, to wit, in words and figures as follows:

71 EXHIBIT A.

This contract and agreement made & entered into on this the first day of September, A. D. one thousand eight hundred and seventy-one, by & between Isaac J. Struble, of the first part, and the St. Louis, Vandalia,

Terre Haute and Indianapolis Railroad Company, of the second part, witnesseth:

That the said Struble agrees & binds himself, for & in consideration of the agreements & stipulations hereinafter mentioned, to be performed by the said railroad company aforesaid, to build and keep in good order on his grounds, situated in East St. Louis, county of St. Clair, State of Illinois, being the lands of the Wiggins Ferry Company, leased to Struble, Fredericks & Co., by lease dated Oct. 17th, 1870, also lots leased of Jesse Hake by said Struble, Fredericks & Co., all necessary stock yards & feeding pens, suitable for the reception, feeding, handling, loading, & unloading of all live stock which may be shipped or transported over said railroad to or from East St. Louis aforesaid; to receive & unload all live stock transported over said railroad to East St. Louis; to collect all freights & charges on same, & pay over to said railroad company or to its authorized agent, all amounts of monies so collected, to order all cars necessary
72 for the transportation of live stock from East St. Louis, from the proper agents of said railroad company; to load in a proper manner all live stock for transportation from East St. Louis by said railroad co.; to bed said cars at a cost to the shippers of said stock of not more than one dollar p'r car, to be collected by said Struble of said shipper; and to attend to all other necessary matters pertaining to the safe and prompt loading of all such live stock for transportation as aforesaid, over the railroad.

The said St. Louis, Vandalia, Terre Haute & Indianapolis Railroad Company, in consideration of the performances of the aforesaid stipulations and agreements on the part of the said Isaac J. Struble, agrees to build all necessary loading schutes for the use of said railroad co. connected with the yards aforesaid; to send all live stock coming to East St. Louis over said railroad to the aforesaid stock yards (except such as is specially ordered otherwise by shippers or owners) to pay said Struble fifty cents p'r car load for all stock received by him over said road; & unloaded in said yards. Said railroad company further agrees to pay said Struble the sum of two dollars for each and every car of live stock loaded by said Struble as aforesaid, to be transported by said railroad co. from East St. Louis.

Said railroad co. further agrees to give to the said Struble, the loading of all live stock which may be transported over [its*] the said railroad from E. St. Louis.

This contract and agreement to be & remain in full force & effect for the term of nine years from the date herein written.

In testimony whereof the said parties hereto agreeing have set their hands & seals.

(S'g'd) I. J. STUBLE.
(S'g'd) W. R. McKEEN, *President.*

73 To the introduction of this paper defendant, by its counsel, objected, for the reasons that it does not, as appears upon its face, nor has it been proven to be, or identified as, the note and memorandum of the alleged contract alleged to have been made and entered into on or about the 10th of October, 1870; that it is not established by the evidence that W. R. McKeen, as president, or otherwise, had power or was at all

* In pencil in original.

authorized to execute the same for or on the part of the defendant or
74 otherwise to bind it thereby; that the paper is not as it appears upon its face the alleged contract sued on in this cause; that it varies materially from and is not the identical note and memorandum contract alleged to have been made and entered into on or about the 10th of October, 1870, and which is alleged to have been signed and delivered by the defendant September 1st, 1871, by the name and hand of W. R. McKeen.

Said objections were overruled by the court and the paper admitted in evidence; to which ruling of the court defendant at the time excepted.

ISAAC H. KNOX, sworn for plaintiff, testified in substance as follows:

I am president of the St. Louis National Stock Yards. I have been connected with the yards for five years. They were in operation about fourteen months when I went there. I went there in 1875.

Question (by plaintiff's counsel). Have you any record or data by which you are enabled to state the number of cars of live stock shipped from the National Stock Yards from November, 1874, to the present time over the Vandalia line?

(Defendant's counsel objected to the question as incompetent and
75 immaterial; the court overruled the objection; to which ruling of the court the defendant the time excepted.)

Witness, answering, said: I have, from August, 1874. The shipment from the 1st of August, 1874, to the balance of the year was 1,456 cars; in 1875, 2,507 cars; in 1876, 2,992 cars; in 1877, 3,017 cars; in 1878, 4,362 cars; in 1879, 4,796 cars; and so far in 1880 there has been, I think, 1,200 or 1,300 cars.

Witness. Live stock billed to East St. Louis on the Vandalia or any other line I suppose would go to this station. I don't know that live stock billed to East St. Louis has ever been taken to the National Stock Yards. All live stock that comes to us by the Vandalia is billed to the National Stock Yards. It is not billed to East St. Louis. The northerly boundary line of East St. Louis is the southerly boundary line of the stock yards. Our eastern boundary *in* the western of East St. Louis; our yards are entirely outside the city of East St. Louis. Our yards run up to the city on the south and east. We do not get our stock billed through to East St. Louis, care of the National Stock Yards. This spur comes in from the main track to our yards. No other freight or passengers,
76 except live stock and provender, is shipped to our yards. I don't know how they consider it, whether as a station or not. It is considered a station of the Missouri Pacific Railroad. Stock that comes into East St. Louis is run out on that spur to the National Stock Yards. I think the switch from the Vandalia line to the stock yards is entirely outside of East St. Louis; that is my impression. It is very near the line, but it runs in an easterly or northeasterly direction. I do not know that there are any other stock yards at East St. Louis than the National Stock Yards where cattle are unloaded, except at the railroad stations. All the railroads profess to have loading chutes at their stations where they take in live stock. There are no stock yards proper. All the railroads have more or less facilities for loading and feeding stock. The mule and horse trade is very largely done at the stations.

Cross-examination:

Four-fifth of the stock shipped over the Vandalia road from the National Stock Yards comes from west of the river, and one-fifth our receipts are Illinois stock—the others Western and Southwestern; stock was always billed to the National Stock Yards; the billing, I mean,
77 directed by the shipper or owner to be sent there; the stock shipped from the National Stock Yards was loaded there, and that stock generally goes out on the spur; it does not go with the Western stock at all. The defendant obtains the shipment of this stock by their agents soliciting it on the premises from the buyers of the stock; the stock is generally brought in by Western owners and changes hands at the yards to Eastern buyers and purchasers, and are shipped by the road; there are five roads proper that compete for the Eastern stock; they are the Chicago & Alton, the Wabash, St. Louis & Pacific, the Indianapolis & St. Louis, the Ohio & Mississippi, and the Vandalia. They all have agents at the yards for the purpose of soliciting shipments; the stock-yard owners control the loading of the stock; two sides of the stock yards are bounded by East St. Louis; there is a street on both sides; there is a United States post-office at the stock yards called "National Stock Yards."

Defendant's counsel asked the following question: What is the capacity of the National Stock Yards?

(Plaintiff's counsel objected to the question as immaterial and
78 irrelevant. The court overruled the objection; to which ruling the plaintiff at the time excepted.)

Witness answered: We can take care of 10,000 cattle, about 25,000 hogs, and 7,000 sheep at one time.

We shipped about 18,000 cars of cattle last year on all the roads. I have seen the remnants of Mr. Struble's yards at East St. Louis. I did not know them during their existence. We have at the National Stock Yards 190 cattle pens, 200 hog-pens, and about 60 sheep-pens; we have over one hundred acres enclosed for yard purposes; we have water introduced into all our pens, and the pens are pretty generally paved; we have about 90 chutes for loading, receiving, and shipping cattle; we have railroad tracks all around the yard to facilitate business. I think we have all the conveniences for the stock-yard business; I am acquainted with other stock yards and the National Stock Yards compare very favorably with any yards since we have been in business.

Redirect examination:

I don't think the Struble yards would have been sufficient to handle even the stock that went over the Vandalia road. I think I could tell
79 pretty much the capacity of the Struble yards. Sometimes as high as 75 cars a day of cattle, hogs, and sheep go over the Vandalia road.

CHARLES C. DALY, being duly sworn on behalf of plaintiff, testified in substance as follows:

My business is live-stock commission; am located at the National Stock Yards. We probably deal in live stock to the extent of three or four thousand cars a year. The name of our firm is Daly, Miller and Company. I went to the National Stock Yards in November, 1873, when the stock yards were opened. I have considerable experience in shipping stock to and from those yards.

Plaintiff's counsel asked the following question: How do you bill stock that goes to the National Stock Yards?

(Defendant's counsel objected to the question as incompetent; the court overruled the objection, and to the ruling of the court the defendant at the time excepted.)

Witness answered: My understanding of the matter is that all stock going by railroads out of Illinois are billed to East St. Louis, care of the National Stock Yards; there is one Western road that con-
80 siders the National Stock Yards a station and has an agent there, acting for it as receiving agent; he may be acting for two roads, but I think he is acting for the Missouri Pacific only, and its tributaries of course. Stock shipped from there are billed from East St. Louis, and the bills of lading are made out from East St. Louis, *and the bills of lading are made out from East St. Louis*, and the freight rates are charged from East St. Louis. Our contracts of shipment and bills of lading call from East St. Louis. Since 1873 the bulk of stock has been loaded from the National Stock Yards. When stock is left at the National Stock Yards it is billed from East St. Louis. All stock received over the Vandalia road, coming to the market of East St. Louis, is billed to East St. Louis, and then sent to the yards over another road—the' are sent over the Conlogue road—it is called the "Connection road;" it had a double track into the National Stock Yards, and connects with the bridge tracks and Carondelet. All stock coming into East St. Louis, or to the National Stock Yards, over the Vandalia road,
81 was run out over the Colongue track. There has been no other stock yards in East St. Louis since 1874; several of the roads have places where they can unload and chutes, but not as we understand stock yards. I remember the Struble yards.

Cross-examination:

I am acquainted with the shipment of stock over the Vandalia line into the National Stock Yards. I receive a good deal of stock off that road consi*d*ned to me; it comes billed to East St. Louis, care of the National Stock Yards added. This stock is sent to me by owners and shippers in the country. Our place of business is at the National Stock Yards and we have no other place. The National Stock Yards are not in East St. Louis. When our friends in the country send in stock they intend it to go to the National Stock Yards; it arrives first at East St. Louis, and then goes up over the Conlogue road to the stock yards. We have received over the Vandalia road all the way from one to fifteen cars at one shipment. I think I have probably received an entire train over the Vandalia road. I would not swear positively that we received what is called a full train; we received cars loaded with stock; they come in the general freight-
82 train, mixed in with other freight. The general freight depot of the Vandalia road is in East St. Louis, near the river; it is there they break up the train and take out the cars for the stock yards; suppose it is much nearer to get to the yards over the Conlogue road than to run back on the Vandalia spur; I don't think the difference is more than a half mile; that is my impression; I don't know; from the station in East St. Louis to the stock yards it is, I should think, about a mile and a quarter; when *is* stock is brought to East St. Louis it is sent up to the stock yards because there is where the market is, that is where we want them; cattle that comes over the Vandalia road, consigned to me as a commission-man

to sell, are consigned to me at the National Stock Yards; I don't know whether it would be cheaper for the railroad to leave stock at the station than to take it over the Conlogue road to the stock yards; we would not be satisfied if the railroad would leave cattle consigned to us at the East St. Louis station; we have no other place of busi-
83 ness than at the National Stock Yards, and it is intended and directed to be sent to the National Stock Yards, all the stock shipped to us; stock that goes east from the National Stock Yards goes back over the Conlogue road probably when the Vandalia road has full trains, that they send it down to their own yards and ship it out in trains; they run it down into their own yards to the general freight train and take it into the train with the other freight. I think the greater part of the stock is loaded in the National Stock Yards.

Redirect examination:

Live stock that comes in in a mixed train goes into the general freight yards of the defendant, and from there is switched out and run to the stock yards; when trains are formed they are taken into the general freight yards at East St. Louis and go out in that way; whenever they have full trains they probably load them out at their own spur direct from the yards; if they have only a part of a train, they run down to East St. Louis and make them up; the freight yards face the river in East St. Louis near the bridge.

84 RICHARD M. MOORE, being sworn on behalf of plaintiff, testified in substance as follows:

I am at present the agent of the east-bound freight pool at St. Louis. My office is at Fourth and Market streets in the city of St. Louis. I was acquainted with the Vandalia line—the Terre Haute and Indianapolis Railroad Company—when I was at the stock yards. I was a clerk at the National Stock Yards from August, 1871, to November, 1872, when I was elected assistant secretary and treasurer of the National Stock Yards. I held that position until November, 1877. The boundary lines between East St. Louis and the stock yards are the middle of St. Clair avenue and the middle of the street on the other side; the Vandalia freight yards are all down on the levee on the river. When stock is shipped in that goes to the National Stock Yards it generally goes first to the general freight yards of the Vandalia road. The boundary line on the south and east of the stock yards is the city of East St. Louis boundary line; the stock yards are just over the city line. Struble's yards were located just north
85 of the Wabash depot. I have never been at them, only passed them daily. I knew of his handling stock there at one time; I don't know who for. I saw cars loaded there; it was some time in 1871 or 1872, I can't recollect exactly. I know a man named Cox; he was in the employ of Mr. Struble at the stock yards. I saw him engaged in loading stock at the National Stock Yards; he came there in 1873, I think, September or October, and claimed the right to load the Vandalia cars.

(Defendant's counsel objected to the witness what he (Cox) claimed; the court overruled the objection; to which ruling of the court the defendant at the time excepted.)

The witness proceeded: He came there and claimed the right to load the Vandalia cars; the president of the stock yards forbade him doing so, and

I do not think he loaded a car there to my knowledge; our men loaded the cars; this was in September or October, 1873. I did not hear the conversation between Mr. Cox and the president of the National Stock Yards.

86 Cross-examination:

Without knowing the boundaries, we always called what was this side of the stock yards East St. Louis. I don't know where East St. Louis actually begun; Illinois City was not in East St. Louis at that time *time*; I don't know when it became a part; it was not in East St. Louis when the stock yards were built. I am not conversant with East St. Louis, and could not point out and identify, on a map, the different localities. All the stock that comes into the stock yards from the Vandalia Railroad is run up, after going into the freight depot of the company, on the main track until it strikes the spur, and then runs in on the north; none runs over the Conlogue road; I have never seen any come in by that way; it did not while I was there. Mr. Cox's full name is F. C. Cox; have seen him at the stock yards several times; he was in the employ of the National Stock Yards two or three months as solicitor for stock; I know his signature; I made out this paper now handed to me; the signature to it is F. C. Cox's.

87 Defendant's counsel then offered in evidence the paper shown witness, being voucher number 2362 of the St. Louis National Stock Yards.

88 VOUCHER No. 2362.

St. Louis National Stock Yards of East St. Louis, Ill., to F. C. Cox, Dr.

1874.	For services as solicitor at Venice, Ills., from Nov. 17 to Dec. 24, 1 mo. 7 d'ys, @ $75 per mo.....	92	50
	By lost time, 5 days.....	12	50
		80	00

Charged to expenses, $80.00.

I certify that the above account is correct; that the items therein specified were fully authorized and contracted for on favorable terms, and have been received for the use and benefit of the company, and are hereby approved.

A. M. ALLERTON, *President.*

Received Dec. 24th, 1874, of the St. Louis National Stock Yards of East St. Louis, eighty dollars in full of the above account.

$80.] F. C. COX.

89 Redirect examination:

There is such a corporation as the St. Louis, Terre Haute and Indianapolis Railroad; I don't know whether that is its corporate name; I don't know whether it is a chartered company by that name, they do business under the name of the Vandalia line, which comprises—I don't know where the Terre Haute and Indianapolis Railroad runs;

the Vandalia line did business under the name of the St. Louis, Terre Haute and Indianapolis Railroad Company; I don't know to and from what point it extends; I don't remember who were the officers; I know Mr. McKeen; I think he was president and had charge of the Vandalia line; General Simpson was the general manager; Horace W. Hibbard was the general freight agent.

Recross-examination:

I understand the St. Louis, Vandalia, Terre Haute and Indianapolis Railroad Company to be a consolidation of several roads under the name of the Vandalia line; that is the name by which they were known; it begins at Indianapolis and terminates now at East St. Louis; the
90 line, I mean, runs through Vandalia, and Terre Haute; the voucher read in evidence was for services rendered by Mr. Cox as solicitor to get stock consigned to the National Stock Yards, to use his influence to get stock shipped in there for sale or future shipment; and he was employed and paid by the National Stock Yards; that was after Mr. Cox was prevented from loading stock there.

ISAAC J. STRUBLE, being sworn in his own behalf, testified *in* substance as follows:

I am the plaintiff in this case. I recognize the signatures to this paper handed me as being the paper dated September 1st, 1871, filed with plaintiff's petition, marked "Exhibit A;" they are mine and Mr. McKeen's; I saw Mr. McKeen sign this instrument in his office at Terre Haute; he was then acting in the capacity as president, I supposed he was, as president of the St. Louis, Vandalia, Terre Haute and Indianapolis Railroad. The chief office of the Terre Haute and Indianapolis Railroad Company is at Terre Haute, and it was there when he signed it; about one year before he had a contract of a similar nature to this, written previous to the signatures
91 to this; the nature of that contract or memorandum was similar to this; the date was blank in that. About August or September, 1870, I made arrangements with the Vandalia road to build certain pens; after agreeing on terms, they were reduced to writing the same ; that is, it was not signed; it was written; Dr. Stennell wrote the contract up and I went to work and built the yards and made my purchases; the contract laid some time before it was segned in deplicate; it was given to the Vandalia road; it was taken by Mr. Hibard and myself to Terre Haute and there signed; Mr. Hibard was the general freight agent of this line; there were two copies made; it was changed from the original form, because the original was for ten years—one year had elapsed, and nine years was written instead; the date inserted was the date when we signed it. Mr. McKeen took one and I took this one; after agreeing upon the terms of my contract in 1870 I leased grounds from the Wiggins Ferry
92 Company and a man named Hoke, and bought some stock yards that the Wiggins Ferry Company owned a half mile or three-fourths of a mile from the ones I built. I tore them down and built up the yards on the grounds I leased. I built yards suitable for feeding and handling stock; we put up feeding-pens and prepared them with water-troughs and pipes; we had water-tanks and an engine and boiler to hoist water up in those tanks to supply the yards with; we made hog and cattle yards; I can't give the cost exactly; they cost in the neighborhood of

$20,000.00 or $25,000.00; the purpose of building those yards were that I had agreed with the Vandalia Railroad to build a suitable place to do their business, and it was for the purpose of executing this contract on my part; after building the yards and making the contract I went on and got all the business I could for the road; from the 1st of September, 1871, to the first of September, 1873, we shipped from there and Hunter's station, and what stock would come in from the North Missouri Railroad, which we
93 shipped from the North Missouri yards, about 5,660 cars loaded for this company; there were no stock yards in East St. Louis at the time I built mine; about a year and a half after they commenced building the National Stock Yards; they were completed in the fall of 1873; I don't know how many cars a day we handled; we did all the business; we did not load all the stock in my yards; they paid me for all the stock that went over the road; Hunter's station is six miles from East St. Louis.

Plaintiff's counsel asked the following question: Do you know where stock loaded in cars of the defendant at Hunter's station was billed from?

(Defendant's counsel objected to the question on the ground that the bills were the best evidence; the court overruled the objection; to which ruling of the court the defendant at the time excepted.)

Witness answered, East St. Louis.

Witness proceeding, said: I had the manifest-book; it is my own book; I can state independently of the book that the stock was shipped from
94 East St. Louis up to 1873. In September, 1873, we loaded at the National Stock Yards, I think, about 396 cars; then they refused to let me have any more there; we loaded about a month. We were paid for the 396 cars; I presented a bill for the loading of stock at the National Stock Yards under the contract I had with the Vandalia Railroad; one month was paid; we sent in a bill for loading stock at Hunter's station under the contract with the Vandalia Railroad and it was paid.

(Defendant's counsel objected to what was done at Hunter's station.)

Witness continued: The stock was actually shipped from East St. Louis; there is no depot at Hunter's station, only a loading chute; no stock is billed from there; it was just for the accommodation of the man that owns the land; he carried stock out there to feed, and when he wanted to ship he would notify us at the stock yards that he wanted so many cars; and we would bed them, send them out and load them; they were billed
95 from East St. Louis; the Vandalia Railroad Company furnished the cars.

Plaintiff's counsel asked the following question: On what account did they furnish you cars?

(Defendant's counsel objected to the question as calling for the opinion of the witness. The court overruled the objection; to which ruling of the court the defendant at the time excepted.)

Witness answered: Under the contract I had with the Vandalia Railroad.

I charged for loading that stock under the contract I had with the Vandalia Railroad. I charged at the rate of one dollar per car for bedding, which was paid by the shipper. The rates were the same as in the contract, because that was billed from East St. Louis; we were paid by the defendant; I loaded stock at Hunter's station under the arrangement every time—most every summer—during the existence of my stock yards.

Plaintiffs asked the following question: Why didn't you go on with this contract?

(Defendant's counsel objected to the question as incompetent.
96 The court overruled the objection; to which ruling the defendant at the time excepted.)

Witness answered: I stopped loading and they stopped paying.

WITNESS. The Vandalia Railroad Company stopped paying; I mean to designate the line represented by the Terre Haute and Indianapolis Railroad Company; I understand they are the lessees. I was notified that I could not load any more stock at the National Stock Yards; that they wanted to do that business themselves; that that was what they built them for; they ceased to bring stock to my yards, because the stock was wanted to go to the other; I was notified about the 1st of September, 1873; my representative at East St. Louis was T. C. Cox; I saw Mr. McKeen about this matter along in September at Pittsburgh; I told him that they had refused to give us the stock to load, and also refused to pay for it; he gave me no satisfaction; said that he could not help it; and about pay said they were poor; I met him in Pittsburgh the fore part of Sep-
97 tember, 1873; I was ready to do all the business we had at that time; my yards were sufficient to do all the business of this company; I never had any complaint made to me.

Plaintiff's counsel asked the following question: State whether you were able and willing to go on with your contract?

(Defendant's counsel objected to the question as incompetent; the court overruled the objection; to which ruling of the court the defendant at the time excepted.)

The witness answered, I was ready and willing to go on and had force sufficient until they refused me.

I had the ability, financially and otherwise, to do so; I kept my full force up to September 1st; I kept my yards furnished and force employed up to that time; I discontinued the force and keeping up my yards, because I had no more business; the Vandalia people took their stock to the National Stock Yards; refused to pay me and I had no further use for my stock yards. My men tell me that there were interviews about it
98 with Mr. Hibbard, the general freight agent, at the time I made the memorandum; as freight agent he had everything to do with it; I had to go to him to get the rates—what was going to be charged. We applied to the agent at East St. Louis for cars; his name was C. N. Bacon; he continued to be agent as long as I was there. The railroad company furnished us books on which we could keep a record; this book handed me the railroad furnished; it came from the general freight agent of the defendants; it was furnished to make out, if there was any, an order on their general freight agent to pay the charges over to me; I generally paid the Western charges, and when the stock was shipped they would refund the money to me. The letters S. L., T. H. & I. R. R. indicate the name of the line, the St. Louis, Vandalia, Terre Haute and Indianapolis Railroad. For the stock that came into the yards that I got the feeding of, and fed with what the railroad company was to pay me, I counted as a net profit two dollars and fifty cents per car; I realized this as net
99 profit during the term. I continued to realize that and I think much more. I am speaking of the stock going out. The name

of the company that Mr. McKeen was president of, did business as the St. Louis, Vandalia, Terre Haute and Indianapolis Railroad Company. I know the blanks handed me. This stock pass is intended to go over the Illinois Central Railroad, starting from East St. Louis; it starts over the Vandalia line; it connected with the Illinois Central at Effingham. I don't know the distance to reach Effingham; it passes over the St. Louis, Vandalia, Terre Haute and Indianapolis Railroad, so called. I know the paper now handed me; they are slips furnished us by the Vandalia Railroad to put on the number of cars, destination, and contents; I received it from the general freight agent; it came from his office.

(Plantiff's counsel offered and read in evidence the papers marked "Exhibit 1.")

100 STRUBLE'S STOCK YARDS, St. L., V., T. H. AND I. R. R.

From East St. Louis to Indianapolis.

Car No. ; Int.
Contents:
Consignee:
Destination:
From E. St. Louis, , 187 ; , conductor.
Received at Effingham, ; , conductor.
Forw'd from Effingham, ; , conductor.
Received at Terre Haute, ; , conductor.
Forw'd from Terre Haute, ; , conductor.
Arrived at Indianapolis, ; , conductor.

Conductors will note dates when cars are forwarded and received from stations above named. Should any cars become disabled and left on the road, conductors will see that it is well secured, and report to the general freight office, and to yard or train masters its condition, number, and where left.

Time freight-cars must not be switched when possible to avoid switching them.

H. W. HIBBARD,
General Freight Agent.

101 The blank now handed me is a live-stock contract of the Illinois Central and Vandalia Railroad. It came from the general agent of the Illinois Central.

(Plaintiff's counsel offered the paper in evidence.)

102 (On margin:) Read this contract.

Live-stock contract.

EXTRACTS FROM THE TARIFFS.

Live stock shipped by contract, under which these companies assume no responsibility for loss, damage, or delay to the stock, in car-loads, at the rates given in this contract.

Cattle and hogs cannot be allowed loaded together.

Non-enumerated live stock of all kinds, not shipped under contract, will be charged 1st-class rates.

Enumerated live stock, in less quantities than car-loads, will be charged first class, estimated weights, as follows:

One horse (except stallions)	2,000 lbs.
Two horses	3,500 "
Three horses	5,000 "
Each additional	1,000 "

Stallions will be reckoned at 4,000 lbs., and taken at 1st-class rates.

Horned animals, 2,000 lbs. each, 2nd class. Calves, sheep, and hogs, less than car-load, 200 lbs. each (but not in any instance less than 75 cents) once and a half 1st class.

The companies will not assume any liability over one hundred dollars on horses and valuable live stock, except by special agreement.

Agents are not allowed to receive and ship such valuable horses or other animals until a proper contract or release is signed by the shipper thereof.

At these rates the owner is to feed, water, and take care of his stock at his own expense and risk, and is to assume all risk of injury or
103 damage that the animals may do to themselves or to each other, or which may arise from delay of trains.

Stock will only be taken by the car-load at the price fixed under the table of special rates, when the contract is executed by the station agent and shipper, to be loaded and unloaded, watered and fed by the owner and at his risk in all respects, except as specified in form of contract or receipt in hands of agents.

One or two cars of stock will entitle one person to pass on the train with the stock to take care of it. Three to seven (inclusive) cars, two men in charge. Three men with eight cars or more to pass on stock train, which the maximum number that will be passed on any train from one consignor or party. It is understood that parties are passed with their stock on the train with such stock to take care of it; that the companies are released from all liability by passing the men in charge, and that stock contracts or stock passes are not good on passenger trains. All persons thus passed are at their own risk of personal injury from any cause whatever.

The agents at the station where the stock is loaded will give no passes, but must enter on this contract the name or names of the persons who are actually intitled to pass free with the stock, which is the authority for the conductors to pass them.

Agents will refuse to enter any name on contract but those of the owner or employés in charge, without regard to passes required by number of cars.

104 Slaughtered hogs carried only at the risk of the owner as to the weather and delay of trains at tariff rates.

☞ No agent is authorized to make an agreement for the shipment of live stock, fresh provisions, or slaughtered hogs at any particular terms. Due diligence will be observed in sending them forward.

[Five cent U. S. revenue stamp.]

[Freight office St. Louis, Vandalia, Terre Haute, and Indianapolis, and Illinois Central Railroad Company.]

Received of , East St. Louis, 187 .

, to be delivered at station, at special rate, being dollars per car. In consideration of which, and for other valuable considerations, it is hereby mutually agreed that said companies shall not be liable for loss of jumping from the cars, delay of trains, or any damage said property may sustain, except such as may result from a collision of a train, or when cars are thrown from the track in course of transportation.

To be fed and taken care of by the owner.

Nos. of cars, ; , agent; , shipper;

, live stock agent.

The conductor of freight trains will pass , and accompanying the stock.

, *Agent.*

105 (Defendant's counsel objected to the introduction of the paper. The court sustained the objection; to which ruling of the court plaintiff at the time excepted.)

WITNESS. This blank now handed me is a freight bill; the stock come in to East St. Louis over the St. Louis & Vandalia Railroad; the stamp on it was used in the business of that railroad.

(Plaintiff's counsel then read in evidence the paper marked "Exhibit 2.")

106 W. B. 118. Car 3446. Reg. No. 8179.

East St. Louis, *Nov.* 28th, 1873.

M. Irons, Cassidy & Co. to St. Louis, Vandalia, Terre Haute & Indianapolis R. R. Dr. for transportation of merchandise from Assumption, 26.

(No claim for damages allowed after property has been removed from warehouse of the company.)

	Weight.	Rate.	Freight.	Advances.	Total.
Hogs.....	18,000	s	.....	.....	26 00

(Across the face in red:) East St. Louis.
Transfer Co. for delivery.
Received payment.

C. N. BACON, *Agent.*
M.

(On the left-hand margin:) For terms and conditions on which freight is transported on this railroad see tariffs, which are pasted up in all the freight-houses of this company, and which tariffs are to be taken and considered as a part of the contract of transportation between the company and their customers.

Date paid.
I. C.

W. B. 117. Car 2951. Reg. No. 8178.

EAST ST. LOUIS, *Nov.* 28th, 1873.

M. Henry Ames & Co. to St. Louis, Vandalia, Terre Haute & Indianapolis R. R. Dr., for transportation of merchandise from Assumption, 26.

(No claim for damages allowed after property has been removed from warehouse of the company.)

	Weight.	Rate.	Freight.	Advances.	Total.
Hogs.....	18,000	8	.....	.....	26 00

(Across the face in red:) East St. Louis.
Transfer Co. for delivery.
Received payment.

C. N. BACON, *Agent.*
M.

(On the left-hand margin:) For terms and conditions on which freight is transported on this railroad see tariffs, which are pasted up in all the freight-houses of this company, and which tariffs are to be taken and consolidated as a part of the contract of transportation between the company and their customers.

Date paid.
I. C.

W. B. 116. Car 3540. Reg. No. 8177.

EAST ST. LOUIS, *Nov.* 28th, 1873.

M. Henry Ames & Co. to St. Louis, Vandalia, Terre Haute & Indianapolis R. R. Dr., for transportation of merchandise from Assumption, 26.

(No claim for damages allowed after property has been removed from warehouse of the company.)

	Weight.	Rate.	Freight.	Advances.	Total.
Hogs.....	18,000	8	.....	.....	26 00

(Across the face in red:) East St. Louis.
Transfer Co. for delivery.
Received payment.

C. N. BACON, *Agent.*
M.

(On the left-hand margin:) For terms and conditions on which freight is transported on this railroad see tariffs, which are pasted up in all the freight-houses of this company, and which tariffs are to be taken and consolidated as a part of the contract of transportation between the company and their customers.

Date paid.
J. C.

W. B. 115. Car 3218. Reg. No. 8176.

EAST ST. LOUIS, *Nov.* 28th, 1873.

M . Henry Ames & Co. to St. Louis, Vandalia, Terre Haute & Indianapolis R. R. Dr.. for transportation of merchandise from Assumption, 26.

(No claim for damages allowed after property has been removed from warehouse of the company.)

	Weight.	Rate.	Freight.	Advances.	Total.
Hogs.....	18,000	8	.....	.....	26 00

(Across the face in red:) East St Louis.
Transfer Co. for delivery.
Received payment.

C. N. BACON, *Agent.*
M.

(On the left-hand margin:) For terms and conditions on which freight is transported on this railroad see tariffs, which are pasted up in all the freight-houses of this company, and which tariffs are to be taken and considered as a part of the contract of transportation between the company and their customers.
Date paid.

J. C.

107 WITNESS (resuming). The samples of the papers shown me were furnished from the general freight office, for doing live stock business, during all the time we did business under this contract.

(Defendant's counsel objected to that part of witness' foregoing answer, wherein he says "under the contract," as incompetent; the court overruled the objection; to which ruling of the court the defendant at the time excepted.)

Witness resuming. The paper now shown me is an order. I know Mr. Cox's handwriting; I think I know Mr. Hibbard's; this signature to that paper is Mr. Cox's writing; I should think that was Mr. Hibbard's; I have seen him write; have seen his signature. I know Mr. Stevens; he was general agent of the Vandalia line, located at St. Louis; I should think he had something to do with the business at East St. Louis; he was over there every few days. F. C. Cox was my book-keeper; he attended to my business; I left it in charge of him when I went away.

Plaintiff's counsel offered in evidence the note of Cox to Hibbard, and Hibbard's reply, marked "Exhibit 3."

108 (Defendant's counsel objected to the introduction of Exhibit 3 as incompetent. The court overruled the objection, to which ruling of the court the defendant at the time excepted.)

The said paper is as follows:

EAST ST. LOUIS STOCK YARDS,
Jan'y 23*d*, 1874.

H. W. HIBBARD, Esq., *G. F. Ag't:*

DEAR SIR: About Octo. 5th, I left with Mr. Cole a copy of contract made between Van. R. R. and I. J. Struble.

If in your possession will be under obligations if you will return it to me at your earliest convenience.

Yours, very respectfully,

F. C. COX.

Mr. McKeen has the paper.

H. W. H.

109 WITNESS. This paper handed me I should think was in Mr. Stevens' handwriting; I have seen him write.

Plaintiffs' counsel offered in evidence the letter shown witness from Stevens to Means, marked "Exhibit 4."

(Defendant's counsel objected to the introduction of the letter as incompetent. The court overruled the objection, and allowed the letter to be read; to which ruling of the court the defendant at the time excepted.)

110 [St. Louis, Vandalia, Terre Haute and Indianapolis Railroad. Office of general agent. N. Stevens, general agent.]

ST. LOUIS, *July 7th*, 1874.

JAMES MEANS, Esq.,
Gen. Ag't P. C. & St. L. R'y:

DEAR SIR: This will introduce to you Mr. F. C. Cox, connected with our stock yards here, & who was for a long time our acting live-stock agent.

Mr. Cox goes East on business relating to live stock, & if you can help him any beyond Pittsburg you will much oblige,

Yours, truly,
(S'g'd) N. STEVENS,
Gen. Ag't.

111 WITNESS. The signature to this paper, now handed me, I recognized as Cox and Hibbard's.

Plaintiff's counsel offered in evidence paper marked "Exhibit 5."

(Defendant's counsel objected; the court overruled the objection and allowed the paper to be read; to which *reading* of the court the defendant at the time excepted.)

The said Exhibit 5 is as follows, to wit:

OCT. 18.

F. C. COX, *E. St. Louis:*

Are you prepared to load our stock at your yards next week?

H. W. HIBBARD.

H. W. HIBBARD:

for % I. J. Struble
Am prepared to load van stock ^ until
~~I give you notice.~~
notice is given you.

F. C. COX.

(NOTE.—The above interlineation and erasure as in the original.)

112 Plaintiff's counsel offered in evidence the passes identified by Mr. Simpson, with a letter-head to show the name the defendant did business in.

(Defendant's counsel objected as incompetent; the court overruled the objection and allowed the papers to be read, to which ruling of the court the defendant at the time excepted.)

The said letter-head is as follows, to wit:

113 TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY,
LESSEE

ST. LOUIS, VANDALIA & TERRE HAUTE R. R.

OFFICE OF GENERAL AGENT,
St. Louis, 187 .

N. STEVENS,
Gen'l Agent.

114 WITNESS (resuming). I built the yards and kept them in good repair; I ordered any cars necessary; I have lived up to the contract; they were to build the chutes, but they ordered me to build them, and they would pay me for it; I ordered the lumber and put them up; I think we put in a bill for $900.00 or $1,000.00; that was the cost; they have not paid me; they built none besides; they paid me for all live stock carried over the railroad loaded by me—it made no difference whether loaded in East St. Louis or St. Louis—up to September and then quit. They did not give me the loading of stock over its railroad; what was loaded by me at the National Stock Yards was not loaded at my place, but they paid for it; they gave me the loading of the stock up to September, 1873.

Cross-examination:

I now reside at Jersey City, State of New Jersey; my address is post-office box 2408, New York City; I am in the hog slaughtering business at Jersey City. I have been engaged in the business off and on for the last
115 twenty years, in New York and New Jersey—about seven years where I now am, since the 7th of February, 1873, and have resided there during the same period of time; prior to that I resided at St. Louis, Missouri; I lived there and in East St. Louis; part of the time in Collinsville. I built those stock yards known as the Struble & Cox yards, in the fall of 1870, at East St. Louis, Illinois, upon lands leased from the Wiggins Ferry Company, and a man named Hake. I know the signature to the paper handed me; it is mine; I think this is the lease from the Wiggins Ferry Company, for the land spoken of. I recognize the signatures to this paper now handed me; that is mine, the other is P. Fredericks'. I should judge it was his signature; the other is Mr. Hake's; that is the lease of part of the land I built my stock yards on. Dr. Stennett was the general agent of the Illinois Central Railroad; his office is in St. Louis; I was personally acquainted with him; he drew the first draft of this contract; said Exhibit A is not in his handwriting; it is in the handwriting of one of the clerks of the Van-

dalia Railroad; I can't think of his name just now; I think it
116 was Mr. Detour; he was a bill clerk; I know him—I knew him as long as he was in the employ of the Vandalia Railroad; I might have known him for a year or more; there was no acquaintance between he and I; he was kind of a bill clerk; I might have had business with him in that way; I got acquainted with him after my yards were built; I know he wrote it by the handwriting; I can't state the date when he wrote it; he must have written before the 1st of September, 1871; we left for Terre Haute that day—the day this was signed. Mr. Hibbard and I went over with that; we went the night before the day of the date of this instrument; I don't know when he wrote it; I don't know whether it was written after the 1st of September; Detour diden't give it to me; I diden't ask him to write it; I diden't tell him to date it back; I diden't know him in the transaction. Detour wrote this at the request of either Mr. Stevens or Mr. Hibbard; he was in their office, and it was written by him; I don't know anything at all about the writing of this paper, when and where it was written, except I recognize it; I suppose it was written in this office; I couldn't say when I first saw this paper; I think
117 the first time I saw it was at Terre Haute; that paper had not the dates on it; that paper is all written by the same hand; it was written as it is there; I had the original in my possession the 1st of September—the original from which this is copied; that is one of the originals; Dr. Stennett wrote the other original: I never saw it since; that was just like this, except the date; there is no date in that; it was signed; there was no date in it at the time; that was in May; it was made a year before that date; Dr. Stennett made it; none of them were signed until a year after; I won't say whether the one Dr. Stennett drew up was signed or not; this one and the one Mr. McKeen has got were written up together; one was given me, and one to him; my impression is both were written by Mr. Detour; both were written at the same time from the one Dr. Stennett wrote; the one Dr. Stennett kept I don't think was ever signed; I think this was the only attempt at making a contract between myself and defendant before that date; Dr. Stennett wrote this at the instance of
118 Mr. Hibbard; we had talked together, and he was to draw up an article; I mean Mr. Hibbard and Dr. Stennett talked together; I was along and was present at the conversation; that was along in August or September, 1870; he drew it up right away; after he drew it up, he gave it to me; Mr. Hibbard was not present; that was the paper from which this was copied literally; I never saw it after they took it and kept it; I could not say whether the original was interlined or not; the original was all in Dr. Stennett's handwriting; I don't know whether there was any scratching to it or not; I conversed with Mr. Stevens, during the year it was lying idle, about getting the contract signed; I think he had seen the contract; I showed it to Mr. Hibbard and Mr. Bacon; I don't know that I showed it to any one else; Dr. Stennett drew it up according to his judgment; it was drawn up according to the talk that we had; I was not present when it was drawn up; I gave it to Mr. Stevens; I don't recollect how long he had it; I had it two or three months after I
119 got it from Dr. Stennett; I think I know W. S. Putnam; he worked for the Vandalia Railroad; I suppose I knew him at that time; I might have talked to him about a contract something like this; I did not get him to copy and change the contract; I don't think I

ever got him to copy and change the contract; I don't think I ever got him to write out a form for a contract like this; I might have had a conversation during the year 1870 or 1871, with him on the subject of a contract similar to this; I think that the only thing I ever saw after that document was given Mr. Stevens is what you have—that contract; I think that is what came out of it; what became of the other one I don't recollect; this in not the paper Dr. Stennett drew up; I don't recollect seeing it after I gave it to thm to be copied; I don't recollect that Mr. Stevens gave it back to me; I gave it to Mr. Stevens to examine, to see whether it would do; it was about the 1st of September, 1870, that Dr. Stennett drew up the paper; I had it in my possession six months unsigned, then
120 I insisted I wanted this thing fixed up; it was then given to Mr. Stevens and he had it written up, and Mr. Hibbard and I took it to Terre Haute to Mr. Steven's office and had it signed; I don't recollect just the time I had it in my possession, but it was a year before it was signed; I had in my possession five or six months, and five or six months after I saw this paper; I don't recollect seeing the original at all; I know this is identically the same, except dates, by reading it; I don't think I ever compared them; I never at any time, during the year 1870 or 1870, endeavored to get a contract for loading stock at my yards from defendant, other than what this paper purports to be; all conversations I had with officers of the road in relation to getting a stock contract is contained in this paper; before I built these yards I had the Ashbrook yards in St. Louis, up to, I think, July or August. 1870; the land I leased in the two leases was all the land I had for the stock yards at East St. Louis; I had a man in with me named Fredericks; he was with me when I built them; the firm-name was
121 Struble and Frederick; there was no such firm as Struble, Frederick & Co.; that is the way I had the leases made out; I can't say what interest Frederick had in the yards; he labored there and gave his time up to 1871; when he left and went up the country I got his interest; I know John W. Conlogue; he was superintendent of the St. Louis and Vandalia Railroad; I mean of this defendant railroad; he was located at St. Louis in 1870 or 1871; I had conversations with him on the subject of this alleged contract; he must have seen the draft Dr. Stennett made; I saw him look at it; I don't know whether it was in his office or in the street; it was in 1870 I showed it to him; I could not say what time in 1870; I wanted him to see it—to pass on it—to see whether it suited him, as one of the officers; I don't know whether he agreed or objected to it; I don't know whether Mr. Conlogue told me he would not enter into any such agreement as that I showed him; I don't know who Mr. Conlogue's clerk was at that time; I don't know that it was W. S. Put-
122 nam; I don't recollect that I told Mr. Putnam that I could not satisfy Mr. Conlogue; that he would not sign or agree to it; my recollection is he did not want to sign it; I will admit that he did object to it; I don't know whether or not I left it in his possession; it was in my possession when I showed it to him to look through; it was in my possession up to that time; I think it was in the winter of 1870; I can't fix any particular month—it must have been during the five or six months I had it; I think I kept an account of the costs of the yards, but I have not got it with me; it is in New York; I can't tell within $5,000.00 what the yards cost; I mean it cost me $20,000.00 or $25,000.00 to build the

yards; it cost Frederick nothing; I think I paid all the bills; I bought most of the lumber from John B. Lovingston in East St. Louis—some from a man named Venice—I don't recollect his name; the posts I bought somewhere else; I could not tell the relative expense of the material and labor of building the yards; I did not figure it out; I examined the account two years ago; I can't tell which cost the most, the labor or
123 material; I think they cost about even; my memory is not so very good; Frederick put in his labor as superintendent in building the yards; he had been in the stock business in St. Louis; he had no interest in the yards over there; all I know about stock being loaded at Hunter's station is that my agents told me so.

(Defendant's counsel objected to all the testimony as to loading stock at Hunter's station, and the court excluded the same.)

WITNESS. We began to ship stock from my yards in the winter of 1870, a little before Christmas. We were building all the summer. They were in practical operation from Christmas, 1870. I think our first shipment was for the Vandalia road; I am not positive it was not the Ohio & Mississippi Railroad. I don't know where the first shipment of stock to my yards come from, or what sort it was. Loaded and received stock from other companies in our yards. They were driven there from the Ohio & Mississippi, Toledo & Wabash, and Indiapolis and St. Louis Railroads, or any of the roads that had stock to come to our yards. The Toledo & Wabash joined our yards; they took out of our yards when any went over their road. The owner of the stock determined what road
124 it should go on. We received stock from any owner who wanted to bring it to our yards.

(Plaintiff's counsel admits that the plaintiff did business for other roads besides the Vandalia Railroad.)

Ours was a general stock yard; anybody could bring stock there and take it out. I don't know of my own knowledge that the defendant refused to allow me to load any more stock for them; my agent told me so. I was not there myself; I went away in February, 1873. I had no personal knowledge what transpired at the yards between the 7th of February, 1873, and the first of September, 1873, when I disbanded my men, only from what they told me. I was in New York; I don't think I came back until the next year; I think it was in the spring of 1874. I left F. C. Cox in charge of my business. He was my manager while I was absent; attended to the business and made collections. After I left here in February, 1873, I think I next saw Mr. Cox in New York. I think I saw him here in the spring of 1874. I made an arrangement with Mr. Cox for his
125 services to stay, and to give him a certain interest for carrying out the contract with the railroad company. I gave him an interest in the yards. I never had any firm. There never was any such firm as Isaac J. Struble & Co. I don't know that any receipts were signed in the name of Isaac J. Struble & Co. for loading cattle. Not many cars of stock were shipped to our yards over the Vandalia Railroad; the shipments were chiefly out of the yards. It belonged to individual owners, and they directed the shipment. I have no personal knowledge about any cattle being shipped or loaded at the yards in 1873 from the time I left. I may have told Mr. Stevens before leaving that it would be better for me to be in New York. I was not required to carry out my part of the contract with

them to stay here. I might have told him I could do better there than here; I told him I didn't want to stay here any longer; I might have said the business did not pay as well as I expected; I don't remember what I said to him. That is the signature of Mr. Cox on the paper handed me, marked "Exhibit A." I should think that was his signature on the paper handed me,
126 marked "Exhibit B." We received our bills monthly; I made them out myself when I was here; I made them out in the name of I. J. Struble; I don't think I ever made out statements of stock shipped in the name of Struble & Fredericks; I received two dollars a car for loading; it might have been along in November or December, 1870, that I received the first payment. We got paid in January for what was done in December; I don't know that I receipted for shipments made in December, 1872, in the name of I. J. Struble & Co.; I run the yards in October, 1872; I received the payments for loading the stock in that month; I receipted for it; if I was away some of my men receipted for me; Mr. Frederick might have taken charge of a stock yard at Venice after he left in 1871; I did not refer in the bills made for monthly payment for services rendered "as per contract." The signature to the paper handed me, marked "Exhibit D," is mine; this is my receipt for money paid to me; the signature to Exhibit E handed me is mine; also to Exhibit F; the signature to Exhibit G is my name signed by Mr. Cox; the signature "I. J. Struble & Co." is
127 written by Mr. Cox; the signature *the signature* to Exhibit H is F. C. Cox."

Redirect examination:

The paper shown me, marked "Exhibit 7," is a power of attorney given to Mr. Cox by me that expresses the authority given to him to manage my business.

(Plaintiff's counsel offered in evidence Exhibit 7.

Defendant's counsel objected on the grounds of incompetence; that the recitals in it are not proven to be true by the paper; the court permitted the paper to be read, to show the appointment only.)

128 EXHIBIT 7.

I. J. Struble, power of attorney to F. C. Cox.

Know all men by these presents that I, I. J. Struble, of the State of New York, do hereby make, constitute, and appoint, and have made, constituted, and appointed F. C. Cox, of East St. Louis, Illinois, my true and lawful attorney in fact for me and in my name, place, and stead, to sign vouchers every month to the St. Louis, Vandalia, Terre Haute and Indianapolis Railroad Company on account of my contract with said company for the shipping of stock until the expiration of my said contract with said company; hereby giving and granting unto him, my said attorney, full power in the premises to do said act the same as if I were personally present; and I do hereby ratify all that may be done, as above set forth by him, my said attorney.

In witness of which I have hereto set my hand and seal this 3rd day of February, A. D. 1873.

I. J. STRUBLE. [SEAL.]

STATE OF ILLINOIS,
St. Clair County, ss:

Before the undersigned notary public this day personally came I. J.

Struble, who, in my presence, signed the foregoing power of attorney, and expressed that he did the same for the purpose therein set forth.

Witness my hand & notarial seal at office in East St. Louis, Feb'y 3, 1873.

[SEAL.] LUKE H. HITE, *N. P.*

129 WITNESS. That was the extent of the authority Mr. Cox had to act for me in this matter. Mr. Cox is dead; I think he died in 1875.

Defendant's counsel offered and read in evidence exhibits C, D, E, G, H, & I.

130 EXHIBIT C.

TRANSPORTATION.

Vandalia Division, Saint Louis, Terre Haute & Indianapolis R. R. to Struble & Fredericks, Dr., for on transportation from East St. Louis, Ill.

From E. St. L.

1871.

Feb'y and March:

Switching paid O. & M. R. R., 181 cars, @ 1.00		181 00
Loading stock, 179 " @ 2.00 & 1.50		290 00
Commissions paid on 99 cars, @ 2.00		198 00
Comm's prorated, as per attached statements:		
T. H. & I.	26 80	
P. C. & St. L.	98 24	
Ill. Cent.	13 40	
	138 44	
	59 56	
Vandalia Div.		530 56

Statement attached.

Correct:

, *Gen'l Fr't Ag't.*

$530.56. Received, East St. Louis, , 1871, of the St. Louis, Vandalia & Indianapolis Railroad Company, five hundred thirty & $\frac{56}{100}$ dollars in full, of the above account.

I. S. STRUBLE.

Approved:

, *Sup't.*

131 EXHIBIT D.

TRANSPORTATION.

Vandalia Division, Saint Louis, Vandalia, Terre Haute & Indianapolis R. R., to Struble & Fredericks, Dr., for transportation East St. Louis, Ills.

From E. St. L.

1871.

April.	Switching paid O. & M. R. R., 129 cars @ 1.00.....		129 00
	Loading, &c., 129 " " 1.50.....		193 50
	Commission on 106 cars, @ 2.00, 212.00		212 00

Prorated as per statements attached:

T. H. & I. R. R.....	27 90	
P. C. & St. L. R. R.....	82 96	
Ill. Central.....	30 82	
	——141 68	
	——	70 32
Vandalia Div.....		392 82

Papers attached.
Correct:

, *Gen'l Fr't Ag't.*

$392.82. Received, East St. Louis , 1871, of the St. Louis, Vandalia, Terre Haute & Indianapolis Railroad Company, three hundred ninety-two & $\frac{82}{100}$ dollars, in full of the above account.

I. J. STRUBLE.

Approved:

, *Sup't.*

132 EXHIBIT E.

TRANSPORTATION.

Vandalia Divison, Saint Louis, Vandalia, Terre Haute & Indianapolis R. R. to Struble & Fredericks, East St. Louis, Dr., for transportation from East St. Louis.

From E. St. L.

1871.

May.	Switching paid O. & M. R. R., 188 cars @ 1.00.....	188 00
	Loading & bedding, &c., 188 " " 1.50.....	282 00
	Commissions paid on 111 cars, @ 2.00	222 00

Prorated as per statements attached:

T. H. & I. R. R.,	41 94	
P. C. & St. L.	97 17	
	139 11	
		82 89
Vandalia Div.		552 89

Papers attached.
Correct:

H. W. HIBBARD,
Gen'l Fr't Ag't.

$552.89. Received, East St. Louis, , 1871, of the St. Louis, Vandalia, Terre Haute & Indianapolis Railroad Company, five hundred fifty-two & $\frac{89}{100}$ dollars in full of the above account.

I. J. STRUBLE.

Approved:

, *Sup't.*

133 EXHIBIT G.

TRANSPORTATION.

Vandalia Railroad Company to I. J. Struble & Co., Dr., for loading or transportation from East St. Louis.

From East St. Louis.

1872.

September. For loading stock at East St. Louis yards consigned to sundry parties at places named:

To local points	13 cars.
" Columbus & P'b'g	55 "
" Phila. & Communepaw	176 "
Trenton, N. J., & Balto	14 "
Cinc. & Chicago	15 "
Buffalo	20
293 cars, @ 2.00 per car:	
Van. Total	$586 00

Correct:

H. W. HIBBARD,
Gen'l Fr't Ag't.

$586.00. Received, Saint Louis, October 1st, 1872, of the Terre Haute & Indianapolis Railroad Company five hundred & eighty-six dollars in full of the above account.

I. J. STRUBLE & CO.

Approved:

, *Sup't.*

134 EXHIBIT H.

TRANSPORTATION.

2623.

Vand. Div. Railroad Company to F. C. Cox for loading stock from St. Louis, Mo., Dr.

1872.

Oct. 351 cars stock, @ 2.00 ..... 702 00
(Paid for loading stock at East St. Louis stock-yards.)

Van. Div., 702.00. Total 702 00

Correct:

H. W. HIBBARD,
Gen'l Fr't Ag't.

$702.00. Received, St. Louis, Oct. 31, 1872, of the Terre Haute & Indianapolis Railroad Company seven hundred & two dollars in full of the above account.

F. C. COX.

Approved:

, *Sup't.*

135 EXHIBIT I.

TRANSPORTATION.

No. 4174.

Van. Div. Railroad Company to F. C. Cox, % I. J. Struble, Dr., for loading on transportation from——

1873.

August. For loading stock at East St. Louis, in month of August, 1873, cons'd sundry parties at points named in statement made: 414 cars @ 2.00; Van. Div., 828.00.

Correct:

W. H. HIBBARD,
Gen'l Fr't Ag't.

$828.00. Received, Saint Louis, Sept. 13, 1873, of the Terre Haute & Indianapolis Railroad Company eight hundred & twenty-eight dollars in full of the above account.

I. J. STRUBLE,
Per F. C. COX, *Att'y.*

(I continued on next page.)

136 I—Continued.

TRANSPORTATION.

Van. Div. Railroad Company to F. C. Cox, % I. J. Struble, Dr., for loading on transportation..

1873.

Sept. & Oct. For loading stock at East St. Louis, in months of September & October, 1873; cons'd sundry parties at points named in statement attached; 200 cars, @ 2.00; 400, Van. Div., $400.

Correct:

H. W. HIBBARD,
Gen'l Fr't Ag't.

$400. Received, Saint Louis, Nov. 12, 1873, of the Terre Haute & Indianapolis Railroad Company, four hundred dollars in full of the above account.

I. J. STUBLE,
Per F. C. COX, *Att'y.*

137 WITNESS. Mr. Frederick never had any interest in the contract; the bills were made out, I suppose, by my book-keeper; Exhibit F now handed me is in the handwriting of Mr. Cox.

(Defendant's counsel offered and read in evidence, Exhibit F, also leases from Weggins Ferry Company to I. J. Struble, Philip Frederick, and George V. Bartlett, dated Oct. 17th, 1870, and from Samuel S. Hake to I. J. Struble and Philip Frederick, dated October 18th, 1870.)

138 EXHIBIT F.

TRANSPORTATION.

Vandalia Division: St. Louis, Vandalia, Terre Haute & Indianapolis R. R., to Struble & Fredericks, Dr., for loading, &c., on transportation from .

1871.

June.	199 cars stock @ 1.50 per car		298 50
July.	253 " " " 1.50 "		379 50
			678 00

For loading and shipping stock from East St. Louis.

Statement of way-billing attached.

Vandalia Div..... 678 00

Correct:

H. W. HIBBARD,
Gen'l Fr't Ag't.

$678.00. Received, Indianapolis, Aug. 9, 1871, of the St. Louis, Vandalia, Terre Haute & Indianapolis Railroad Company six hundred seventy-eight dollars, in full of the above account.

I. J. STRUBLE.

Approved:

, *Sup't.*

139 *Lease from Wiggins Ferry Co. to Struble & Co.*

This lease, made and entered into in duplicate this 17th day of October, 1870, by and between the Wiggins Ferry Company, a body corporate, chartered by the State of Illinois, party of the first part, and John J. Struble, Phillipp Frederick, and George V. Bartlett, doing business under the firm-name of Struble, Frederick & Co., party of the second part, witnesseth:

That said party of the first part in consideration of the covenants, agreements, and stipulations hereinafter mentioned, as well as the yearly rental of one thousand and six hundred and fifty ($1,650.00) dollars (the first payment to be made Dec. 31st, 1870), to be paid quarterly in each year, do by these presents lease to the said party of the second part, for the term of ten (10) years from the date hereof, the following lots or parcels of land, situate, lying, and being in the second ferry division of East St. Louis, a plat of which is duly recorded in Belleville, St. Clair County, Illinois, viz: Lots number six (6), seven (7), eight (8), and nine (9), in block number three (3), having an aggregate frontage of one hundred and twenty (120) feet on the east line of Front street, by a depth of one hundred and ten (110) feet to a thirty (30) feet alley. Bounded on the north by the north line of said lot six (6) as defined on the recorded plat, on the south by lot number ten (10) in said block number three (3), on the east by said alley, and on the west by said Front street. Also lot number one (1) in said block number three (3), having a frontage of thirty (30) feet on the west line of Second street, by a depth of one hundred and ten (110) feet to the thirty (30) feet alley aforesaid. Bounded on the north by lot num-

140 ber two (2) in said block number three (3), on the south by Spring street, on the east by said Second street, and on the west by said alley. The last-named lot is hereby leased subject to a prior lease given by said party of the first part to the Adams Express Company; also the following piece or parcel of ground situate, lying, and being in St. Clair County, State of Illinois, bounded and described as follows, to wit: Beginning at a point one hundred and thirty-five (135) feet east of the intersection of the north line of said Spring street, with the east line of said Second street; thence east along the north line of said Spring street, if extended, about nine hundred and five (905) feet to a point, which said point is two hundred and sixty-six feet and six inches ($266\frac{6}{12}$) north of the main track of the Decatur & East St. Louis Railroad as now established; thence northward about seventeen hundred and eighteen (1,718) feet to a point; thence southwardly about fourteen hundred & twenty-three (1,423) feet to a point; thence southeastwardly five hundred & seventy-six (576) feet, more or less, to the point of beginning, containing about twenty-eight $\frac{61}{100}$ acres ($28\frac{61}{100}$). For a more particular description of this last-named piece of land, reference is here made to the property embraced in green lines, as defined on the plat attached hereto, which said plat forms a part of this lease. Said party of the second part hereby bind themselves to place no obstruction or impediments on the road located near the northwestern angle of the property last-above described (and marked on the plat hereto attached, in light brown colors), or interrupt in any manner the free transit of passengers and vehicles over said road.

141 The said party of the second part, for themselves and legal representatives, hereby covenant with said lessors, their legal representa-

tives or assigns, to pay said rent quarterly as aforesaid, and also to pay all city, county, and State taxes, and all other taxes and demands of every description, nature, or kind whatever, which may from time to time be legally required or demanded of said premises, whether general tax or special tax. Every failure, first, to pay the said quarterly rent or any part thereof, when it is respectively due or payable, or second, to pay the said city, county, and State taxes, and all other taxes and demands, or any part thereof (legally required or demanded of said premises, within the year the same shall become due, assessed to either said lessors, their assigns, or legal representatives, or to said lessees or their representatives); or third, to keep and perform any of the other covenants, agreements, or stipulations herein, shall make and create a forfeiture of this lease, and a termination of the time for which the above premises were let, and all the estate hereby conveyed shall be absolutely void, if so determined at any day or time however distant, after such failure, by said lessors or their legal representatives or assigns, giving ten days' notice in writing to that effect, which said notice may be served by posting a copy or duplicate of the same up at one of the most public places on said premises, or by delivering a copy or duplicate of such notice to said lessees or their legal representatives. This lease of said premises, or any part thereof, is not to be assigned under penalty of forfeiture, without the written consent of said lessors or their legal representatives or assigns. At the ex-
142 piration of this lease the said premises to be delivered to said lessors or legal representatives or assigns. The said lessees, and all who may hold under them, hereby engage to pay double rent for every day that they or any one else in their name shall hold on to the whole or any part of said premises after the expiration of this lease, or after forfeiture thereof. And in case of any forfeiture of this lease, the said lessors or legal representatives or assigns may forthwith take possession of said premises, with all the improvements thereon, and shall be entitled to the same, any custom, usage, or law to the contrary notwithstanding. All improvements erected on said premises by said lessees or their representatives, or by any one who may claim under them, are bound for the payment of each quarterly instalment of rent, and for the city, county, and State taxes, and all other taxes and demands as aforesaid, and for arrears of rent or taxes, and in case of the punctual payment of rent and taxes, as herein specified, the said lessees are hereby authorized to remove all such improvements, and no other, at the expiration of this lease, which they or any one who may claim under them, may have erected on said premises during said term. It is mutually agreed that when this lease expires said party of the second part shall have the right to renew the same for a term of years, at a revaluation of the property.

In testimony whereof the Wiggins Ferry Company have caused these presents to be signed by their president and attested by their secretary, with the seal of the company hereto affixed, and the said party of the second part by their hands and seals.

143 [CORPORATE SEAL.] LEWIS V. BOGY,
Pres't Wiggins Ferry Co.

HENRY L. CLARK,
Secretary of Wiggins Ferry Co.

STRUBLE, FREDERICK & CO.,
By I. J. STRUBLE.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this eighteenth day of October, A. D. eighteen hundred and seventy, before me, the undersigned, a notary public within and for the county and State aforesaid, came Lewis V. Bogy, president of the Wiggins Ferry Company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, and to be the officer he is herein designated, and he acknowledged the same to be the act deed of the Wiggins Ferry Company for the purposes therein mentioned; and on the same day and year came John J. Struble, a member of the firm of Struble, Fredericks & Co., personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, and he acknowledged the same to be his act and deed, and also the act and deed of the said Struble, Fredericks & Co., for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

[NOTARIAL SEAL.] JOSEPH L. PAPIN,
Notary Public, St. Louis County, Missouri.

(Here follows diagram marked page 144.)

145 *Lease from S. S. Hake to I. J. Struble & Co.*

This lease, made on this 18th day of October, A. D. 1870, by and between Samuel S. Hake, of East St. Louis, Illinois, lessor, and I. J. Struble and Phillip Frederick, of St. Louis, Missouri, lessees, witnesseth:

That the said lessor, in consideration of the agreements and covenants hereinafter mentioned to be kept and performed by the said lessees, their executors, administrators, and assigns, has demised and leased to the said lessees all those premises situate in the second ferry division of the city of East St. Louis, in the county of St. Clair and State of Illinois, known and described as—

1st. Lots numbered one (1), 2 (two), 3 (three), and 4 (four), of block numbered 4 (four), containing one frame dwelling and other improvements, and being enclosed with a good fence.

2d. Lots numbered 2 (two), 3 (three), 4 (four), and 5 (five), of block numbered 3 (three), being also enclosed and containing six (6) frame dwellings.

To have and to hold the said premises and the appurtenances unto the said party of the second part, the said lessees, their executors, administrators, and assigns, from the 18th day of October, A. D. (1870) eighteen hundred and seventy, to the 18th day of October, A. D. (1880) eighteen hundred and eighty, yielding possession and paying rent therefor as hereafter stated. In consideration of the leasing of said premises by said party of the first part, said lessor, to said lessees, they covenant and agree with said lessor, his heirs, executors, administrators, and assigns, to pay to said lessor, or his assigns, at the East St. Louis Bank, in East St. Louis, St. Clair County, Illinois, as rent for said premises—

1st. The sum of eighteen hundred ($1,800) dollars per annum,
146 payable quarterly at the end of each quarter, except the first quarter, which is to be paid in advance, and the receipt of which is hereby confessed.

(On margin:) This section to be stricken out.

2d. All taxes and assessments, general and special, and demands of every description which may be required or demanded of said premises or of said lessor as owner of the same, during the term of this lease, and before the same and any one demand shall be declared delinquent, and to deliver the official receipts for the payment of each said general or special tax, assessment, or demand to said lessor or his legal representative, with the instalment of money rent next thereafter falling due, and at the place where it is payable; provided that the said lessor or his legal representatives may at any time, in his or their own name, pay such taxes, assessments, or other demands, in which case the amounts so paid, with ten per cent. interest per annum, shall be repaid by said lessees to said lessor with the instalment of rent (money) next thereafter falling due; and

Provided further that all amounts payable to said lessor and his legal representatives by said lessees remaining due and unpaid shall bear interest at the rate of ten per cent. per annum from maturity till paid.

And it is furthermore covenanted and agreed between said lessor and said lessees, as a consideration for the letting of said premises—

1st. That this lease is not to be assigned by said lessees without the consent in writing of said lessor expressed in each of the two duplicates of this indenture.

2d. That the said lessees may remove the improvements and houses upon said premises from place to place upon said premises, using extra
146½ care so as to prevent injury and damage to the same, but that none of said houses shall be removed from and away from said premises without the consent in writing by said lessor first given, and that no waste shall be done or suffered to be done to said premises.

3d. That said lessees and all who may hold under them shall keep said premises free from any disorderly, bawdy, or gambling establishment, and every other nuisance whatever, and that they shall keep said premises in as clean and healthy a condition as the ordinances of the said city of East St. Louis and the city authorities may direct and require.

4th. That it shall be the duty of said lessees and their legal representatives to tender and to make all payments obligatory on them, as the same shall fall due from time to time, at the East St. Louis Bank (a corporation doing business in said city of East St. Louis) aforesaid, to the said lessor or his legal representatives; and it shall not be necessary in any event for said lessor or his legal representatives to go on or near said demised premises to demand said payments or any of them, or elsewhere that at the place aforesaid.

5th. That the said lessor shall have the first lien upon all improvements and appurtenances and fixtures erected on said premises, by or for said lessees or their legal representatives, for all demands under this lease, and that none shall be removed therefrom until such demands (at the option of said lessor) shall be fully satisfied.

And it is expressly understood and agreed by and between said lessor and lessees that if the rent above reserved, or any part thereof,
147 shall be behind or unpaid on the day and at the place of payment whereon and whereat the same ought to be paid as aforesaid, or if default be made in any of the covenants herein contained, to be kept by said lessees, their executors, administrators, assigns, and other legal repre-

sentatives, it shall and may be lawful for the said party of the first part, the said lessor, his heirs, executors, administrators, agent, attorney, or assigns, at his or their election, to declare said term of this lease ended, and the said premises, or any part thereof, either with or without process of law, to re-enter; and the said party of the second part, the said lessees, or any other person or persons occupying in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy as in his first and former estate.

It is also expressly agreed that the said lessor shall in no case be deemed or held liable for any loss or damage done to said lessees by water or fire, from any source whatever, during the continuance of this lease, and that at the termination of said lease by expiration the said lessees will surrender the possession of said premises to said lessor and his legal representatives peacefully and quietly, with the improvements thereon in as good condition as the same now are, reasonable wear and decay alone excepted. And if at any time said term shall be ended at the election of said lessor, his heirs, executors, administrators, or assigns, as aforesaid, or in any
148 other way, the said lessees, their executors, administrators, and assigns, do hereby covenant, promise, and agree to surrender and deliver up the said premises and appurtenances, houses, &c., peaceably to the lessor, his heirs, executors, administrators, and assigns, immediately upon the determination of said term as aforesaid; and if they shall remain in possession of the same ten days after notice of such default, or after the termination of this lease in any of the ways above named, they shall be deemed guilty of a forcible detainer of said premises under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal forcibly or otherwise, with or without process of law, as above stated. Posting a copy of such ten days' notice upon a conspicuous part of said premises shall be deemed sufficient service of the same; and in order to enforce a forfeiture of this lease for non-payment of rents, &c., when due, no demand for rent when due shall be required, any demand being hereby expressly waived.

And it is further covenanted and agreed that for every day said lessees shall remain in possession of said premises, or any part thereof, after determination of the same or expiration thereof as aforesaid, they shall pay to said lessor twenty-five dollars as damages; and that this obligation shall be binding upon said lessees and all holding under them, their executors, administrators, and assigns; and that the said lessees, and their executors, administrators, and assigns, shall pay and discharge all costs and attorneys' fees and expenses that shall arise from enforcing the covenants of
149 this indenture by the said lessor, his heirs, executors, administrators, or assigns.

In testimony whereof both lessor and lessees have hereunto set their hands and seals to this and to a duplicate hereof this 18th day of October, A. D. 1870 (eighteen hundred and seventy).

SAMUEL S. HAKE. [SEAL.]
I. J. STRUBLE. [SEAL.]
P. E. FREDERICK. [SEAL.]

Signed, sealed, stamped, and delivered in presence of—
W. H. STENNETT,
W. R. HEAD.

150 WITNESS. At the time of the making up of this contract all the parties agreed that it was the same as the written memorandum; there were no objections.

Plaintiff's counsel asked the following question: Do you know whether it was written up from the memorandum or whether the memorandum was correctly set forth in the contract?

(Defendant's counsel objected to the question as incompetent. The court overruled the objection, to which ruling of the court the defendant at the time excepted.)

Witness answered: Yes, sir.

At the time of the signing at Terre Haute, Mr. McKeen, Mr. Hibbard, and myself were present. Mr. McKeen knew of this memorandum before going to Terre Haute. At the time of the signing of this paper Mr. McKeen sat at the head of the table. I sat on one side and Mr. Hibbard on the other. It was handed to him, and he examined it very carefully, and there was talk about it, and he signed it in the presence of myself and Mr. Hibbard. The had been agreed upon by the officers in St. Louis to run ten years, and one year had elapsed. That was talked
151 of there, and because one year had elapsed it was made nine years.

Recross-examination:

At the time this paper was signed by Mr. McKeen and myself there was another paper before us, one similar to that. There was no other paper except the one this was taken from. That paper was not present at the time this paper was prepared.

WILLIAM B. MENZIE, being sworn on behalf of plaintiff, testified in substance as follows:

My business is that of a hog-buyer at the National Stock Yards. I know Mr. Struble. I was working with Mr. Struble in 1870, 1871, 1872, and part of 1873. I was working in his yards, taking charge, feeding and receiving stock at his yards in East St. Louis, and doing general work in the yards. I was there at the time the Struble yards were built; part of the yards were built on trestle, probably 10, 12, or 15 feet high in elevation; those were what we called hog-yards. They were supplied
152 with water, good facilities for feeding, receiving, and shipping them.

We had large cattle-pens built down on what was called the flats, and ample room for receiving and handling all stock. We had yards upon what was called the elevation, level with the hog-yards; they were put up on piling. We had capacity for a couple of thousand hogs, or hogs and cattle, on that elevation. We had water-tanks built, and an engine for pumping water out of the river into the tanks, to supply the pens; every pen had a pipe leading to the watering troughs. There were corn-pens for holding corn; a loading platform for loading and a receiving platform for unloading stock. We always had ample capacity for anything that went over the Vandalia road. I don't know how many cars we could ship in a day; we shipped, I believe, as high as 70 or 75 cars in a day; we shipped out three trains a day. The capacity of the yards was never tried to its full extent; I don't know how many acres there were in all; there were, I think, about twenty or twenty-five of the ferry lease. Mr. Struble bough' a good deal of lumber Livingstone,
153 and bought out what was called the Jennings yards; there was a great

deal of old lumber in them; he tore them down, dug up the pipes and posts, and everything there, and moved them up to his yards. He bought lumber from various parties, I could not say exactly from whom. We commenced building in October, 1870. We first began shipping the early part of 1871; there might have been some shipped before. I stayed most of the time at the stock yards until October, 1873. Up to the 1st of August, 1873, the greatest portion of the stock that went over the Vandalia line passed through those yards. We loaded some at Hunter's Station, some at the Pacific yards, some at the North Missouri yards, and some at the National Stock Yards, and also some at what was called the old platform warehouse of the Vandalia Railroad at East St. Louis. The stock was transported from East St. Louis, the shipping point. Stock that was so shipped was paid for by the Terre Haute and St. Louis Railroad Company. We would get word from the officers of the railroad—the general manager, general freight agent, and sometimes the local agent at East St. Louis, and the stock agent—where stock was to
154 be shipped from. Mr. Bacon, at East St. Louis, was the local agent, Mr. Hibbard was general freight agent, and Mr. Stevens was the general agent; Mr. Shields and James Harris were the stock agents. Stock loaded at Hunter's station would go directly east; I know we got paid at the same rate as for stock loaded at East St. Louis; trains that started from East St. Louis would stop at Hunter's station and take the stock and carry it on east; the freight rates were charged from East St. Louis; I am not positive we loaded stock at the National Stock Yards in July, but we loaded them in August, 1873, to about September 1st, 1873; the defendant company ceased to bring stock to the Struble yards about the 1st of September or October, 1873; we went to the National Stock Yards to load the stock of the Vandalia Railroad, as claimed under the contract; we thought it was our duty to look after this stock and load it; I went over there through the orders of Mr. Cox, who was Mr. Struble's agent, and found the stock to be loaded; I loaded it, made out a manifest for it, and they accepted it; I reported those
155 shipments, and they were paid for by the defendant; we continued to load at the National Stock Yards up to about September 1st, 1873; we didn't keep on, because the president of the National Stock Yards refused us that privilege; I went there with a force of men to load the stock, and Mr. Allerton said I could load that day, but would not be allowed to load any more; that they had built the yards there for the purpose doing the business of all the roads, and that they did not propose to have another party come there to load stock unless he received the benefit of it; I reported to Mr. Cox, and we both went down to East St. Louis and notified Mr. Bacon, the local agent; Mr. Bacon said he could not do anything in the matter, but to report to Mr. Hibbard, the general freight agent; Mr. Cox and I came over to see Mr. Hibbard; Mr. Cox told him what had happened at the National Stock Yards, and Mr. Hibbard said he could not give him any satisfaction; Mr. Cox demanded the right to load the stock under the Struble contract; Mr. Hibbard said he could not do anything whatever; I went up then and took the shipments of stocks that *that* went out from the National Stock Yards
156 on this road; after that refusal there was some stock taken to the Struble yards, to load and unload, by the defendant; I could not state

how it was after that; Mr. Mullhall shipped some cattle over that road in September; they were loaded at the Struble yards; the Vandalia took its stock to the National yards; it commenced taking it there in July, 1873; it has all been there since 1873; I don't know since what month; I left Struble's yards after September; when I left, nearly one-half was going to Struble's yards, the other half went to the National Stock Yards; I stayed there until near the 1st of October, 1873; I lived in East St. Louis till the fall of 1875; I have been doing business there ever since I came here; after October, I think, nearly all the stock went to the National Stock Yards; Mr. Mullhall's stock came from the St. Louis side of the river; it was taken over there, put in the yards, taken care of, loaded, and shipped out; sometimes he would send us word he wanted cars for so many cattle or hogs, sometimes he would report to the general office over here; I should say

157 that there was a profit for the shipment of each car of cattle under a contract which gave two dollars a car for loading, and required one dollar to be charged to the shipper for bedding of two dollars and fifty cents a car; after the refusal to load, Mr. Cox told me to go out there & take the number of cars of shipments for each and every day; we made out our manifests, and they were accepted the same as if we did the loading ourselves; we continued doing so for two weeks; they refused to pay any of the manifest; it was sometime in September that they refused to pay; I know Mr. Cox wrote a letter to Mr. Hibbard, the general freight agent; he wrote it, I suppose, for Mr. Struble; I saw him write it; it pertained to this matter.

(Defendant's counsel objected to the testimony in regard to the letter as incompetent and supposition on the part of the witness. The court overruled the objection, to which ruling of the court the defendant at the time excepted.)

WITNESS. The stock business of the Vandalia line was done at the National Stock Yards; there were no other yards adjacent to East St. Louis; there have been none since 1873.

Cross-examination:

158 I have known the plaintiff to this suit since I was big enough to know anybody; I am related to him; I helped build Mr. Struble's yards; I know Mr. Philip Frederick; he was then in the same capacity, I guess, I was; I understood him that he was a partner in the yards; I don't know the firm-name; I saw the name signed Struble and Frederick; I could not say what other lumber-yard lumber was purchased from outside of Lovingston and Jennings; I can't say that Mr. Struble only used the lumber of but one yard in constructing his; I do not know but he got the lumber from some yards on this side of the river; I was at the Askbrook yards with him, but not in his employment; I was an employee in the yards of Struble and Fredericks. To my own knowledge the first cattle were shipped out early in 1871. I was away about the holidays; I stayed at those yards until about the 1st of October, 1873, in the capacity of general employee. All the stock shipped out over the Vandalia Railroad up to the summer of 1873, from the time the Struble yards were built, went through the Struble yards. I say throug' August and in September the stock was pretty evenly divided.

159 Stock was brought over the river in cars and driven out on the ferries; they were Western and Eastern cattle; they were ordered

to be loaded into Vandalia cars to the East; I don't know the owners; the owners did not always bring them there; they were brought there by transfer and by parties who made it a business to deliver stock from one yard to another. Sometimes the Vandalia would have them brought there. I am only speaking of shipments, and not in general terms. The Vandalia road would order stock brought there for loading. As a general thing it was brought there by their stock agent, who solicited this stock. Every road has a stock agent. They would solicit stock at the little yards and in the Western country to go over their road, and it was through this agency this stock was brought to the Struble yards; it was shipped from there East over their road; they got it there for the purpose of loading it. Sometimes there would be stock brought there by other people; they took out all the stock they had an opportunity to take; they sometimes failed to send cars, but never refused; when cars
160 were short we would sometimes hold the stock over. Sometimes shippers would refuse to wait and said they would take it to some other road; it would be taken to other roads and shipped. I coulden't tell how often it occurred; it was an exceptional occasion; as a rule they supplied all the cars that were wanted. The shortage of cars only occurred occasionally. The Vandalia road, to my knowledge, never refused to let us load stock at the Struble yards. In September, 1873, at the National Stock Yards, Mr. Bacon, of East St. Louis, and Mr. Hibbard, general freight agent, prevented us from loading cars. Mr. Hibbard said he coulden't allow us to load stock at the National Stock Yards; that the National Stock Yards claimed the loading of it, and he coulden't pay Struble and the National Stock Yards too. The loading apparatus and loading facilities at the National Stock Yards belonged to it. I suppose that was the reason Mr. Hibbard assigned why we coulden't load there; at the time of the refusal, Mr. Hibbard or Mr. Bacon was not at the National Stock Yards. Stock loaded at the National Stock Yards upon cars of the
161 Vandalia road at present goes out on the stock-yard switch to the Vandalia Railroad direct; it did not always; they used to come into East St. Louis to go east; that was in the fall of 1873 and the summer of 1874; a full train might not have run down from the National Stock Yards to East St. Louis to start from there; I am positive that full trains have been taken down from their yards after 1874; I know this from shipping hogs in the summer time; I diden't want them to be put in between trains where they couldn't get air; the stock was run down to be made up into a freight train; freight trains are mixed trains—with stock mixed in between; after I left Struble's employment I went to work with Mr. Keys; we were buying hogs at the North Missouri yards; we were located there awhile, probably a week, and then Mr. Keys and I located at the National Stock Yards; I changed my location from Struble's yards to the National Stock Yards; I did not business until the opening of the firm; that time I went to soliciting in the country for Mr. Keys on commission in the live-stock commission business, for stock to be shipped to Keys at the Na-
162 tional Stock Yards, from the shippers, and procured orders to sell at the National Stock Yards; that had become a live-stock market; shippers, our patrons, consigned their stock to East St. Louis; sometimes they would give the name, but generally consigned to themselves; when they remained with their stock some would come on this side of the

river and some go on to the National Stock Yards; there were other men employed to solicit stock to go to the National Stock Yards for other commission men; there were five or six, or may be ten; they always solicited to come on this side or to go to the National Stock Yards; I never went back to the Struble yards after I left—only as I may have passed by; I don't know what became of the yards; I could not tell how long Struble and Frederick were in building the yards; we were building a good deal for two years; chutes are a necessary appendage to a stock yard to make it complete for loading; stock could not be loaded without chutes; a stock yard would not be complete without an unloading platform and loading chutes; there were four cattle chutes in that yard and one double-
163 deck hog chute; they were built in the spring or summer of 1871; I can't say that there was a chute built at the time the first train was shipped out there; I suppose we had something that would do for a chute; they were completed in 1871, 18'2, and in 1873; I would not say positively that they were completed in 1871; I think they were completed in 1872; we had stock there in 1871; the Vandalia took out the first stock; I know by the shipment; there might have been some shipped in 1870, when I was not there; the Ohio and Mississippi shipped some stock from there; the Indianapolis or Toledo & Wabash did not ship any stock from there; I know W. H. Richardson; I knew him when the Struble Yards were in existence; he worked for the Toledo & Wabash Railroad; he was connected with the freight department of that road; other roads did at times, load and unload stock at those yards; the Ohio & Mississippi, I believe, loaded some hogs there; sometimes stock would be entered for the Vandalia road and they would not have cars, and the parties would have the stock sent on the Ohio & Mississippi; the owners of the stock directed that; they had control over it.

164 Redirect examination:

The Vandalia Railroad has always had a stock agent, so far as I know; the other roads always have; these stock agents were for the purpose of soliciting stock for their road; the stock agents always gave directions with reference to stock going over their road; that was their business. I never heard any complaint made by the Vandalia road as to the sufficiency of the yards or manner of handling stock; they always appeared to be well pleased with the facilities we had in the yard. I heard Mr. Bacon, Mr. Hibbard, and Mr. Stevens speaking in that manner to a great many shippers over the road, and taking the trouble to bring them to the yard and walking from one end to the other. With reference to the amount of stocks shipped over the Vandalia from the National Stock Yards from the month of September, 1873, to the month of August, 1874, as contrasted with the stock shipped in the previous years over that line from East St. Louis, I should judge a gain of 500 to 1,000 cars; that was a pretty good year for stock; I don't remember how much it was the year previous; I judge
165 about 2,200 or 2,300 cars; I think there was an increase from the previous year; I know that there were shipments during that time constantly.

Recross-examination:

These shipments were from the National Stock Yards, East St. Louis; I said that stock agents directed where to take the stock to be loaded; I

heard Mr. Shields and Mr. Harris say so; I have been with them at the North Missouri yards and the Pacific yards; this was at various times; I have heard them soliciting stock to be taken to the Struble yards, and Mr. Shields continued to do so as long as he was an employees of the company.

ROGER B. SIMMS, being sworn on behalf of plaintiff, testified in substance as follows:

I am a stock trader at the National Stock Yards, and have been since 1875.

Question. Where is your stock billed to that goes to the National Stock Yards?

(Defendant's counsel object to the question, because the evidence inquired after was immaterial, and that the bills were the best evidence; the court overruled the objection, to which ruling of the court defendant's counsel at the time excepted.)

166 Witness answered: It is billed from different places, billed from East St. Louis.

WITNESS. I was employed in the Struble yards both in the construction and afterwards; the yards had capacity for handling from eighty to one hundred cars of stock of all kinds per day; companies complained of the insufficiency of the yards; but the Vandalia did not; the loading chutes were built in the early part of the winter of 1871; I am not positive of the date; we began to receive stock in the fall of 1870; we unloaded the cattle out of the cars into the pens in the yard on unloading platforms, and generally put them in by means of loading chutes, sometimes by the platform; the Palace Car Company had some cars that it was more convenient to load from the platform; I remember Mr. Stevens being at the yards and of his expressing satisfaction of the manner and expedition with which stock was loaded; it was promptly handled.

Cross-examination:

I don't remember positively the year the yards were commenced; I think in October, 1870; I was not there at the commencement; the first stock was shipped in the early part of the next year, January or Feb-

167 ruary, I should think; there were two loading chutes then built; I helped to load the first shipment; in a few days after five more chutes were built; we built five chutes for loading cattle, and the next spring we converted one of them into a double-decker chute; this was in March, 1871; I left there in May or June, 1871, and returned, I think, in November, and was in the yards off and on until the spring of 1873; I went to the National Stock Yards in November, 1873.

WILLIAM B. MENZIE recalled by plaintiff.

I have worked at those books; they are manifest books of the shipments over the Vandalia road; some of them are in my handwriting, some in Mr. Cox', and some of them in Mr. Doerr's; Mr. Cox is not living. I have made a statement from these books of stock shipped from the 1st of September, 1872, to September, 1873.

Question. State to the jury what it is.

(Defendant's counsel objected to the witness stating the result of his examination of any entries or books not made by witness or in his presence,

and that the entries and books were immaterial, irrelevant, and in-
168 competent as evidence in the cause; the court overruled the objection and permitted witness to state his knowledge of the fact, after having refreshed his memory by an examination of the book; to the ruling of the court the defendant at the time excepted.)

Witness answered: There were 2,866 cars from the 7th of September, 1872, to the first of September, 1873, at the stock yards, and 393 cars at the National yards.

Cross-examination:

I recollect by examining the books; I was present when part of the entries were made; I could not tell the months; I was present when a good many were made; I examined the books; that is all I have to go by; that is, I examined a little press-copy book, and know that they are correct, because they were always checked by the Vandalia road by Mr. Bacon, who I saw check a good many—not these books; he did not check upon these books, he checked the manifest of these books; the manifest is at the Vandalia road; these are copies of the shipments made over the Vandalia road; the book from which I take my data is the letter-press copy book of the manifests
169 that were delivered to the Vandalia Railroad—to Mr. Bacon, in his office, at least, which is the same thing; the originals were delivered to Mr. Bacon; I delivered some, sometimes Mr. Cox, sometimes Mr. Doerr, whoever we wanted to send down; I should suppose they were delivered by their paying for them; I have seen them paying for them; I have seen them give the vouchers for them, which is the same thing; not for all of them—I have seen them pay for part of them.

This was all the evidence offered or introduced by plaintiff, and he thereupon rested his case.

Whereupon the defendant, by his counsel, moved the court to exclude from the evidence the alleged contract dated September 1st, 1871, upon the grounds that it does not appear upon its face, nor has it been identified as such, as proven to be the note and memorandum of the alleged contract alleged to have been made and entered into on or about the 10th of October, 1870, and because it has not been established by the evidence that W. R. McKeen, as president or otherwise, had power or was
170 in any way authorized to make or execute the same for or on the part of the defendant, or to bind it thereby; and that it, the said writing dated September 1st, 1871, was not, as it appeared upon its face, the alleged contract declared in this cause, and that there is a material variance between it and the supposed contract alleged to have been entered into on or about the 10th day of October, 1870, and set out in the petition as the contract entered into between the plaintiff and defendant; that it is not the identical note and memorandum of contract alleged to have been made and signed by "W. R. McKeen, president;" that it bears date the 1st day of September, 1871, whereas the alleged contract sued on is alleged to have been made on the day of October, 1870, and because there is no evidence to prove its ratification by the defendant; which motion was by the court overruled, to which ruling of the court the defendant at the time excepted.

DEFENSE.

Defendant, to sustain the issues upon his part, offered and gave evidence in substance as follows:

The defendant's charter.

171 An act to incorporate the Terre Haute and Richmond Railroad Company, approved January 26th, 1847, as published in the authorized edition of the laws of Indiana of 1847, page , and especially sections 1, 8, 9, 10, & 12 thereof, which read as follows:

SECTION 1. Be it enacted by the general assembly of the State of Indiana, That Chauncey Rose, Samuel Crawford, E. M. Huntington, J. M. Mullican, James Farrington, Thomas I. Bourne, and R. W. Thompson, of Vigo County and State of Indiana, and their successors in office, duly elected as hereinafter provided, are hereby constituted a body corporate and politic by the name of the "President and Directors of the Terre Haute and Richmond Railroad Company," and by such name shall be sued, plead and be interpleaded, answer and be answered unto, either in law or equity, in any court of competent jurisdiction within this State, and shall have power to make and use a common seal, and the same to alter at pleasure, and to make contracts and enforce the same, and to establish and
172 put in force such by-laws, rules, and regulations as may be necessary to carry into effect the provisions of this act, not inconsistent with the constitution and laws of this State and of the United States.

SEC. 8. It shall be the duty of the directors elected as above, and those elected at all subsequent elections, to meet as soon thereafter as they conveniently can, and elect one of their own body president; the president and directors there elected shall continue in office until the next annual election, and until their successors are elected and qualified or organized.

SEC. 9. All elections after the first shall be held on the 1st Monday in January, annually, under the direction of three stockholders not directors at the time, to be appointed by the board at a previous meeting, or by the stockholders present at the time of holding said election; and notice of such election shall be given in at least one newspaper: Provided, That if from any cause whatever there shall be no election held on the day appointed by this act, or by the directors, for the first election, it shall be lawful to hold the election on any other day.

173 SEC. 10. Certificates of stock shall be given to the stockholders, which shall be evidence of the stock held; they shall be signed by the president and countersigned by the clerk. The stock shall be transferred on the books of the corporation personally or by agent or attorney, or by the administrator, executor, trustee, or guardian; but such stock shall be held at all times by the corporation for any dues from the holder thereof to the corporation or for any sums that may thereafter be due on contracts made prior to such transfer.

SEC. 12. The corporation, by their agents, shall have full power, from time to time, to examine, survey, locate, and construct a railroad, of a single or double track, commencing at some point on the western line of the State of Indiana, and running, on the best ground for the interest of the company and the public convenience, eastwardly through Terre Haute, in the

county of Vigo, Green Castle, in the county of Putnam, and Indianapolis, in the county of Marion, to Richmond, in the county of Wayne.

Also the act entitled "An act to change the name of the Terre Haute
174 and Richmond Railroad Company, and to give further time for the completion of the line of said road from Terre Haute to a point on the western line of the State of Indiana," approved March 6th, 1865, as published in the authorized edition of the laws of Indiana, 1865, page and especially section (1) one thereof, which reads as follows:

SECTION 1. Be it enacted by the general assembly of the State of Indiana, As the act approved January 26, 1847, entitled "An act to incorporate the Terre Haute and Richmond Railroad Company, incorporating said company under the name of the President and Directors of the Terre Haute and Richmond Railroad Company, that the said name and style of said company be, and the same is hereby, changed, and said company shall hereafter be known by the name and style of the Terre Haute and Indianapolis Railroad Company. All contracts, obligations of any kind whatever, and liabilities of every kind heretofore entered into, or contracts in any manner, under the name of the Terre Haute and Richmond Railroad Company, or under the name of the President and Directors of the
175 Terre Haute and Richmond Railroad Company, by said company, shall remain in full force, notwithstanding the change in the corporate name herein provided for, so that the said company under the new name of the Terre Haute and Indianapolis Railroad Company shall have and possess all the rights and be subject to all the liabilities imposed by said act entitled "An act to incorporate the Terre Haute and Richmond Railroad Company," approved January 26th, 1847, and by virtue of the provisions of each and every act subsequently enacted amendatory of or in aid of said act incorporating said company, as fully as such rights, privileges, franchises, and liabilities would have existed had the name and style of said company not been changed by this act.

RICHARD A. MORRIS, called by defendant, testified:

I reside in Terre Haute, Indiana. Have known defendant since 1851, and have been connected with it since then; in 1874 I became and am now its treasurer; know that defendant had and used its seal since
176 its organization; I know its seal; would recognize it on seeing it. (Being shown a paper dated the 14th day of March, 1877, signed "Wm. H. Buckingham, secretary," with a seal impressed on it, said:) Know the seal impressed on this paper to have been made by the corporate seal of the company; have been defendant's secretary from 1867 to January 1st, 1872; during that time that seal was in my possession.

Cross-examination:

I know only from the records that the defendant first organized in 1847; it was in 1865 when the name of the defendant was changed by the legislature to its present name, Terre Haute and Indianapolis Railroad Company; the year immediately previous to my appointment as treasurer I was connected with defendant; while I was secretary I kept its records; W. R. McKeen was president then and is now; he is at Terre Haute; don't know whether he is informed of the progress of this suit, but suppose he is; Mr. Hibbard is reported sick at Hot Springs, but is still an

officer of the company; don't know whether he is informed of the progress of this trial; know of Dr. Stennett only from what I am told
177 that he is at Chicago in the employ of the Illinois Central Railroad Company.

(Defendant's counsel then offered in evidence the paper heretofore shown to the witness as impressed with defendant's seal, to show the organization of the company and its seal.

Plaintiff's counsel objected to it as irrelevant; the court overruled the objection, to which ruling the plaintiff at the time excepted.)

178 *Certificate with seal to show corporation.*

TERRE HAUTE, INDIANA.

At a meeting of the Terre Haute and Richmond Railroad Company, at the Stewart House, on Thursday, March 4th, 1847. Present, Messrs. C. Rose, Sam'l Crawford, E. M. Huntington, J. H. Turner, M. Mullikin, R. W. Thompson, and F. J. Bourne. Mr. Rose was elected president, and F. J. Bourne secretary.

Ordered, That books for subscription to the capital stock be opened at Terre Haute, Green Castle, Indianapolis, and Richmond, and that on each share subscribed two dollars shall be paid at the time of subscribing, for the purpose of meeting the expenses of surveys and the incidental outlays.

Messrs. Huntington, Farrington, and Thompson were appointed a committee of correspondence.

(Signed) C. ROSE, *President.*

F. J. BOURNE, *Secretary.*

STATE OF INDIANA, *Vigo County:*

I, W. H. Buckingham, do hereby certify that I am the secretary of the Terre Haute and Indianapolis Railroad Company; that as such secretary am the keeper of the record book of the proceedings of the stockholders and board of directors of said company, and that the above and foregoing is a true and faithful copy from said record book.

In testimony whereof I have hereunto set my hand and the seal of said company, in the office of said company, in Terre Haute, this fourteenth day of March, 1877.

{ CORPORATE SEAL } W. H. BUCKINGHAM,
{ T. H. & I. R. R. CO. } *Secretary.*

179 HENRY L. CLARK, sworn for defendant, testified:

I am secretary of the Wiggins Ferry Company, and have been since 1862, with my office located in St. Louis. (Witness next was shown a plat attached to the deed of lease from the Wiggins Ferry Company to plaintiff and others for land in East St. Louis, Illinois.) I know the handwriting of Mr. Millikin; he was president of the ferry company in October, 1873, and the name signed to the paper now shown me is his signature.

(Defendant then offered in evidence the "notice to quit."

Plaintiff's counsel objected, and the court overruled the objection, to which ruling of the court the plaintiff at the time excepted)

The defendant then read the notice to quit, which is as follows:

To I. J. Struble, Philip Frederick, and George V. Bartlett, doing business under the firm name of Struble, Frederick & Co.:

You are hereby notified that in consequence of your default in the payment of the quarterly rent of the premises now occupied by you in St. Clair County, Illinois, being lots 1, 6, 7, 8, and 9 of block 3 of the
180 second ferry division of East St. Louis, in St. Clair Co., Illinois, reference being had to the recorded plat of said ferry division; also the following-described lot of land: Beginning the survey thereof at a point one hundred and thirty feet east of the intersection of the north line of Spring street with east line of Second street of said ferry division; thence east along the north line of said Spring street, if extended nine hundred and five feet; thence northward, making with the last line an angle 89° 55′, seventeen hundred and eighteen feet; thence southwestwardly, making with the last line an angle of 48° 20′ fourteen hundred and twenty-three feet; thence southeastwardly to the point of beginning—the same premises leased to you and described in your lease from us dated October 17, 1870; we have elected to determine your lease, and you are hereby notified to quit and deliver up possession of the same to us in ten days of this date.

Dated at East St. Louis, this 20th day of October, A. D. 1873.

N. MULLIKIN,
Pres. Wiggins Ferry Co.

181 Defendant's counsel then offered in evidence the session laws of 1873 of the State of Illinois, and especially sections 1, 9, 10, and 11 of the act entitled "An act to revise the laws in relation to landlord and tenant."

(The plaintiff's counsel objected, and the court overruled the objection, to which ruling the plaintiff at the time excepted.)

The defendant then read the said sections, which are as follows:

SECTION 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That the owner of lands, his executors or administrators, may sue for and recover rent therefor, or a fair and reasonable satisfaction for the use and occupation thereof, by action of debt or assignment, in any court of competent jurisdiction, in any of the following cases: First. When rent is due and in arrear on a lease for life or or lives.

§ 9. When default is made in any of the terms of a lease, it shall not be necessary to give more than ten days' notice to quit or of the termination of such tendency, and the same may be terminated on
182 giving such notice to quit at any time after such default in any of the terms of such lease; which notice may be substancially in the following form, viz:

To. A. B.:

You are hereby notified that in consequence of your default in (here insert the character of the default), of the premises now occupied by you, being the (here describe the premises), I have elected to determine your lease, and you are hereby notified to quit and deliver up possession of the same to me within ten days of this date (dated etc.).

To be signed by the lessor or his agent; and no other notice or demand of possession or termination of such tenancy shall be necessary.

§ 10. Any demand may be made or notice served by delivering a writ-

ten or printed, or partly written or partly printed, copy thereof to the tenant, or by leasing the same with some person above the age of twelve years residing on or in possession of the premises; and in case no one is in the actual possession of said premises, then by posting the same on the premises.

§ 11. When any such demand is made or notice served by an
183 officer authorized to serve process shall be prima facie evidence of the facts therein stated, and if such demand is made or notice served by any person not an officer, the return may be sworn to by the person serving the same, and shall then be prima facie of the facts therein stated.

Witness continued: There was on October 20, 1873, a balance of $641.66 rent due to Wiggins Ferry Company upon the lease of the land in question.

(At this point the witness was withdrawn for the purpose of proving the handwriting of F. C. Cox.)

W. S. PUTNAM, being sworn on behalf of defendant, testified in substance as follows:

I knew F. C. Cox who was acting for Mr. Struble in charge of Struble's yards in East St. Louis, Illinois; I know Mr. Cox's handwriting; the written endorsement on the paper containing the notice to quit now handed me and identified by the previous witness (Clark), I would say this writing to be that of Mr. Cox's, and I can so state.

Cross-examination:

Have seen Mr. Cox write every day for several months during a year or two; did not see him sign this paper; I give it as my opinion
184 as being his handwriting simply from the fact of the similarity of the handwriting and from the fact that I saw him write his name.

(Defendant then offered and read in evidence the paper-writing identified by the witness, and also the affidavit attached thereto; which said affidavit and writing are in words and figures as follows:

The affidavit.

STATE OF ILLINOIS,
City of East St. Louis, ss:

EMILE J. EGGMANN, of lawful age, being duly sworn, upon his oath says that on the 20th day of October, A. D. 1873, he served the within notice by posting a true copy of the same at one of the most public places on the within-described premises, and also by delivering a true copy of the notice to Freend C. Cox, carrying on business and in possession of the premises therein described.

EMILE J. EGGMANN.

Subscribed and sworn to before me this 21st day of October, A. D. 1873.
[SEAL.] W. C. HEWETT, *Clerk.*

The writing identified as that of Mr. Cox.

October 31st, 1873. This certifies the Freend C. Cox in posses-
185 sion of the within-described premises, holding the same under the *written* named Struble, Frederick & Co., to avoid the cost of

litigation threatened by the Wiggins Ferry Company by a forcible detainer suit and the annoyance thereby, surrender up to the said W. Ferry Company the said premises to the full extent as if by them recovered by such forcible ditainer suit, and further hereby acknowledge that henceforth I hold the said premises at the pleasure of said ferry company as their agent and in their name.

F. C. COX.

Attest: S. S. HAKE.

HENRY L. CLARK, recalled by defendant, testified:

As secretary of the Wiggins Ferry Company I am, and since 1862, the keeper of its books and papers; there was a change of owners of the stock-yards after that notice to quit, and as a result two payments were made to us as our share of operations there after that date. I recognize the paper handed me as belonging to Wiggins Ferry Company; it purports to be a statement of the operations of the stock yards in November, 1873; it is signed by Mr. Putnam, and I must have seen it at our office at or about its date; William Putnam was then an employee of Wiggins Ferry
186 Company, and this paper was his report, and is signed by him. The paper now handed me is signed by Wm. Wiggins, assistant secretary of Wiggins Ferry Company, which he was at that time, December, 1873.

Defendant, to show that plaintiff's stock yards, on November 1st, 1873, had passed into the hands and controle of the Wiggins Ferry Company, offered in evidence the paper identified by witness, and which reads as follows:

Van. Div. Railroad Company to Wiggins Ferry Company, East St. Louis, Dr., for loading on transportation from E. St. Louis.

1873.
Nov. For loading stock at East St. Louis, statement attached, 44 cars, @ 2.00 per car..... 88 00

Correct.

H. W. HIBBARD,
Gen. Fr't Ag't.

Received, St. Louis, Dec. 11th, 1873, of the Terre Haute and Indianapolis Railroad Company, eighty-eighty dollars, in full of the above account.

WM. WIGGINS,
Ass't Sec'y.

(Plaintiffs objected. The court sustained the objection, to which ruling of the court the defendant at the time excepted.)

Cross-examination:

I do not know the handwriting of Mr. Cox.

(Being shown an impression copy of a letter on a sheet of yellow
187 tissue-paper, dated East St. Louis, Oct. 17th, 1873, from F. C. Cox to S. C. Clubb, witness stated:) I could not say that I have

as secretary of the Wiggins Ferry Company the original of this in my possession, but I will look when I leave the stand whether we have it or not.

(Plaintiff then offered the impression copy of that letter in evidence. Defendant's counsel objected to it as irrelevant and incompetent. The court overruled the objection, to which ruling of the court the defendant at the time excepted. The defendant further objected to it because the transmission and delivery of the original had not been proved. The court sustained the objection, to which ruling of the court the plaintiff at the time excepted.)

The said letter-press copy of letter is as follows, to wit:

EAST ST. LOUIS STOCK YARDS, *Oct.* 17*th*, 1873.

Capt. S. C. CLUBB,
Sup't Wiggins Ferry Co.:

DEAR SIR: Owing to the gen'l fr't ag't of Van. R. R. having refused to pay for the loading of "live stock" on said road as per my understanding of agreement made with I. J. Struble, I find myself unable to liquidate rent now due the Wiggins Ferry Company. I respectfully request that you and S. S. Hake, esq., to whom a similar claim is now due, and by proper arrangement I am satisfied there is plenty to pay all demands. I have telegraphed Mr. I. J. Struble to come on at once, but have received no reply.

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With respect, I am, sir, your ob't s'v't,

F. C. COX,
Att'y in fact for I. J. Struble.

Plaintiff's counsel then offered in evidence an impression copy of another letter, also on a sheet of yellow tissue-paper, and dated East St. Louis Stock Yards, Oct. 17th, 1873, and addressed by F. C. Cox to S. S. Hake, as being part of the same transaction.

(Defendant's counsel objected to the introduction as irrelevant and incompetent. The court overruled the objection and permitted the paper to be read, to which ruling of the court the defendant at the time excepted.)

The said letter-press copy is in words and figures as follows:

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EAST ST. LOUIS, ILL., *Octo.* 17*th*, 1873.

S. S. HAKE, Esqr.:

DEAR SIR: Owing to the gen'l fr't ag't of Van. R. R. having refused to pay for loading of stock as per my understanding of contract made by Van. R. R. Co. with I. J. Struble, I find myself unable to liquidate for rent. I am satisfied there is enough property here to settle with you in full, and request you to see Capt. S. C. Clubb, to whom is due 4 mo's rent. Have telegraphed Mr. Struble to come on, but as yet have no answer.

I am, sir, with every consideration of respect, your ob'd't s'v't,

F. C. COX,
Att'y in fact for I. J. Struble.

190 WITNESS.—Mr. Clubb is still an officer of the company; I have no personal knowledge of the transfer of the stock yards; gave no

personal attention to them either before or after Struble is said to have left, and had no occasion to observe what was done about them; it was not in my line of duty.

S. C. CLUBB, being sworn on behalf of defendant, testified in substance as follows:

I am president of the Wiggins Ferry Company, residing at St. Louis; have been connected with the company since 1865, and as its president for two years; was general superintend' from 1871 to within two years; I heard the lease read *heard*, but not the notice to quit; I sat too far back in the court-room; I recognize in the notice to quit now handed me the premises described—the premises occupied by Struble, by what was known as "Struble's yards," or Struble's stocks. I was not present at the time of the forfeiture of the yards; was gone about four weeks; left about the middle of October, 1873, and returned in November. On my return I found that there had been a surrender of the yards; before my
191 going away at that time I was almost every day within one hundred to three hundred feet of the yards; the Wiggins Ferry Company had an office close to the yards *had an office close to the yards.*

Cross-examination:

(Witness being shown the letter press copy of the letter of Oct. 17th, 1873, from F. C. Cox to witness stated:) This paper was handed to me just before I was put on the stand; I read it, but can't say that I ever received this letter; I remember having received a number of letters from Mr. Cox, but do not remember writing any in reply. I received letters from him about the lease and the yards, about the date of that letter, before and after it.

(Plaintiff then again offered in evidence the impression copy of the letter from F. C. Cox to S. C. Clubb, first offered in evidence on the cross-examination of H. L. Clark.

Defendant objected because it was not shown that the original was ever delivered, and as being irrelevant and incompetent. The court overruled the objection and permitted the letter to be read, to which ruling
192 of the court the defendant at the time excepted.)

Re-examination:

I did not know on my return in November, 1873, in whose possession the stock yards were; it appear*er* the foreclosure was had during my absence; in a few days after my return I ascertained the yards were in the possession of Mr. Hake and the Wiggins Ferry Company. Plaintiff's counsel here admitted that on the 31st day of October, 1873, the Wiggins Ferry Company and Mr. Hake took possession of the yards, and that from that date plaintiff had abandoned it.

WITNESS. I know the yards were continued from the 31st of October, 1873, to the first of January, 1874, for the purpose of receiving cattle; don't know that any were shipped from there, but stock was received there; I think Mr. Cox leased the yards from the Wiggins Ferry Company about February, 1874; the secretary would be most likely to know about the lease; he would be required to keep it. Mr. Putnam was an agent and had an office within three hundred feet of the yards during the time they were operated by Hake and the Wiggins Ferry Company.

193 Recross-examination:

Personally I don't know much about stock coming into the yards after October 31st, 1873, but only from the memoranda and statement in the company's office that I recently looked over; I saw cattle driven into the yards, and I saw cattle go out on cars.

(Defendant then offered to give in evidence proof of the delinquency of rent due on the Hake lease; the proceedings, and c., under which the Hake lease became forfeited for non-payment of rent, and Hake's re-entry on October 31st, 1873, to plaintiff's exclusion, in pursuance to the laws of Illinois heretofore given in evidence.

Plaintiff's counsel objected, because plaintiff admits that from October 31, 1873, he had nothing to do with the yard. The court sustained the objection, stating that the admission made the offered evidence and proof unnecessary, to which ruling of the court the defendant at the time excepted.)

PHILIP E. FREDERICK, being sworn on behalf of defendant, testified fied in substance as follows:

I reside in Shelby County, Missouri; know the plaintiff, and
194 have known him since we were boys together in Ohio; I was associated with him in the stock-yards in question; the firm name was Struble & Frederick; the yards were built in October, 1870, I think they were never finished; I estimate their cost at $11,000.00 they were in operation in December, 1870, loading cattle for Ashbrook & Jamison and others, on cars of the Vandalia R. R.; also loaded some from the same chutes for the Ohio and Mississippi also by driving stock from these yards to the adjacent yards of the Wabash Railroad Company, loaded stock on their cars from their own chutes; there was only a gate between the two yards; did not load stock for the Indianapolis and St. Louis Railroad Company from our yards, but only for the Vandalia, Ohio and Mississippi, and Wabash; what we loaded for the Wabash was by driving through that gate and then through their own shutes; what stock we loaded for the Ohio and Mississippi, was through our chutes and from our yards. I left the yards about June 12th, 1871, because they did not pay; I went to the Venice Stock Yards, about two miles distant, and there loaded for the Indianapolis & St. Louis, the Chicago and Alton, and the Wabash, and the Rock Island Railroad Companies.

195 Question by defendant's counsel: Was there ever any adjustment of accounts between you and Struble in regard to this joint venture of yours in those yards?

(Plaintiff's counsel objected to the question on the ground that it does not affect the damages or right to recover. The court overruled the objection, to which ruling of the court the plaintiff at the time excepted.)

Witness answered, "Not any."

The witness (being instructed by the court to state briefly what the yards were built for) proceeded: When we hunted a location for these yards the Vandalia Railroad had no good place to load cattle, and we built those yards to get a place for them to load to advantage, and to get as near to the river as possible. After we got those yards built we tried to make it a general yard, and to get all the stock in we possibly could, and Mr. Stennett told me—I talked a little with him, but as Struble was the monied man I diden't try to interfere very much or pay any special attention,

only to work—he told me we should be particular and have a contract with the Vandalia Railroad to run a certain length of time before
196 ever we did anything at all.

(Defendant's counsel objected to any statements made by Stennett or Struble to witness. The court overruled the objection, to which ruling of the court the defendant at the time excepted.)

WITNESS. Mr. Struble told me that he had a contract—that he had secured a contract—but I never saw it. I attended to the work of superintending the work; Stennett suggested this to us before we ever struck a lick, when we were leasing the land; never had any conversation with Mr. Conlogue, the superintendent of the Vandalia Railroad, about contract. After the yards were built I tried to get all the roads in, to do a general business as much as we possibly could, by soliciting their patronage; the hog business made the yards profitable during the winter; got a great many hogs in from all the railroads; the hogs were fed there, and weighed and sold to packers; all the railroads brought hogs in. After the hog season was over the yard was not profitable in the spring. I know of the National Stock Yards, they are about one and one-fourth east
197 of the yards Struble and I built; they were commenced in the spring of 1871; don't know when they were completed; it was our business to get stock to come to our yards to enable railroads to take it out; the stock came in over the Pacific Railroad, and from the North Missouri, and the Broadway Yards in St. Louis; some came by boats and some were brought in cars by the Transportation Company from the west side of the river; some of the stock that came in went out over the Vandalia and some on the Ohio & Mississippi; the shippers and owners controlled whether the stock should go out over the Ohio and Mississippi, the Wabash or the Vandalia; what went out over the Ohio & Mississippi came in from the same sources as that which went out over the Vandalia; the Wabash had a stock agent (Mr. Boyd), and I understood Mr. Struble was appointed by the Vandalia as its stock agent; the other roads objected to Mr. Struble acting as the Vandalia stock agent, and he resigned and one Harris was appointed by them in his place; *this* stock agents were at our yards and at any place that they could find stock, soliciting shipments over
198 their roads; they treated with the owners of the stock, and these would send it over the road giving them the best *times*.

Cross-examination:

Before we struck a lick of work we understood the Vandalia Railroad had no convenient place to keep their stock or to load it.

Question. And they commenced to talk with Struble about providing a place, and then the conversation or talk came up that you remember about Struble building a yard for the Vandalia; is that the fact?

Yes, both of us.

Quest. This yard that was to be built you say was to be built for the Vandalia?

Ans. Yes, sir.

Quest. To accommodate them in the shipment of stock and the care of stock while there at East St. Louis?

Ans. Yes, sir.

Quest. And when this thing first began to be talked about it was understood that it was desirable to have a contract for ten years?

Ans. Yes, sir.

Quest. And Mr. Struble and Mr. Stennett and others talked about having it for ten years?

Answer. Yes, sir.

Quest. You understood that Mr. Stennett was interested for the
199 Vandalia and the Vandalia stock, did you?

Ans. He was interested for the Illinois Central stock.

Quest. Well, the Illinois Central stock had no road there into East St. Louis?

Ans. No, sir; they run over the Vandalia.

Quest. They ran their stock out some eighty miles over the Vandalia line, or the Vandalia Company took the Illinois Central stock on its own line about eighty miles?

Ans. Yes, sir; I don't know the distance; it is about that distance.

Quest. What did Mr. Stennett tell you about the purpose of building these yards at the time of this conversation that you have already spoken of in October, 1870?

(Defendant's counsel objected to any statements of Stennett, he not being identified as having been an agent of or having any authority to speak for or to commit the defendant, and as being incompetent and irrelevant. The court overruled the objection, to which ruling of the court the defendant at the time excepted.)

Ans. He said we should have a contract, before we struck a lick, for ten years.

Witness. As long as I was at the yards I superintended the loading of the stock that went out over the Vandalia Railroad. It was loaded
200 by men belonging to the yard. The National Stock were commenced just previous to my leaving. The yards were reasonably profitable during the winter season, but not in the spring.

Quest. Do you know whether the prospect of the traffic of live stock over the Vandalia Railroad was one of the objects which was had in view when this yard was built?

(Defendant's counsel objected to the question as incompetent and irrelevant. The court overruled the objection, to which ruling of the court the defendant at the time excepted.

Ans. I think it was expected that we would gain a good trade for the Vandalia Railroad when we built the yards.

Quest. What was the object of having the contract for ten years; was it this increase of profit or business?

(Defendant's counsel objected to the question as not growing out of the examination-in-chief, and leading. The court overruled the objection, to which ruling of the court the defendant at the time excepted.)

Ans. I wouldn't know any other object.

Witness. I would say that 4,000 cars per year at the prices we
201 received from the Vandalia Railroad would be profitable. I invested only about $800.00 in money in the yards, and never called on Mr. Struble for a settlement; kept no account of the money expended in the yards.

Redirect examination:

We tried to get all the roads to come in and load and unload stock there; we never expected the Indianapolis and St. Louis, but we did expect the

loading of the Vandalia, Wabash, and Ohio and Mississippi; we finished two loading-chutes in December, 1870; when I left there were four loading chutes for cattle and one double-deck chute for hogs; all these except two of the four for cattle were completed, and these two were partially finished; I worked myself in building the yards; I understand that I said that we built these yards for the Vandalia Railroad specially; I want to say that we built the yards for ourselves, with the promise of the Vandalia and other roads patronizing our yards; I thought I had said that before, but it appears I stated that we built the yards for the Vandalia; we built them for ourselves.

202 WILLIAM DETORR, being sworn on behalf of defendant, testified in substance as follows:

I live in St. Louis since the last fourteen or fifteen years; know both plaintiff and defendant; am now working for the Indianapolis and St. Louis Railroad as bill clerk; was bill clerk for defendant under Station Agent Bacon in 1871, billing east-bound freight.

(Witness being handed and having inspected and referring to the instruments given in evidence by the plaintiff as the original contract between plaintiff and defendant, stated): This is my handwriting; as far as I remember Mr. Struble came to me with this contract and told me to make him a copy of it, that it was all understood between him and the company, and I made this copy of the paper; the original paper was handed me by Mr. Struble and I made this copy; the original had alterations and and so on in lead pencil, and interlineations and so on, and scratched out, and I had a hard time to make out the original; this was in the latter part of September, 1871; was told to date it back to September 1st;

203 knew the contract was binding all the same; never saw any other contract before I saw this one; it is the first one I ever made out; after I had written it I handed it and the one I had copied from both back to Mr. Struble; this paper here is all in my handwriting except the signatures; I wrote it all at the same time.

Cross-examination:

I got the paper from Mr. Struble; no difficulty at all about recollecting this; I copied this page from the one Mr. Struble gave me; Struble said he was in a hurry to go to Terre Haute to get it signed; this paper I wrote is identical with the paper he gave me to copy, except the date that was blank in the original.

Question. But at the time Struble handed you that paper, what did he say to you?

(Defendant's counsel objected to the question as incompetent. The court sustained the objection, to which ruling of the court the plaintiff at the time excepted.)

WITNESS. Struble desired me to copy the paper, because, as he said, he was in a hurry to go to Terre Haute and get it signed.

Ques. Did he (Struble) state to you at that time that the paper

204 that he handed you, and from which this copy was made, had been agreed upon as a contract between him and the railroad company?

(Defendant's counsel objected to the question as incompetent. The court overruled the objection, to which ruling of the court the defendant at the time excepted.)

Answer. I don't know. He told me it was all understood; for me to make out the papers. He did not state that it had been understood for a whole year previous, but told me to date it back to September 1st, and he would go right down to Terre Haute and have it signed by Mr. McKeen. I drew the paper up in the latter part of September. This was a kind of a private business between me and Mr. Struble. I generally used to do things for him. Mr. Struble never told me how long he had this understanding with the company; he was working there a long time without a contract; I don't know when he commenced; I did not furnish him bills for loading stock; he furnished me bills; got acquainted with Cox in East St. Louis, at the East St. Louis Hotel, in 1870; don't remember the month; did not hear about any arrangement between Mr. Struble
205 and the Vandalia Railroad Company; was in the employ of the Vandalia line, of which Mr. McKeen was president, and Hibbard general freight agent; was under no obligation to copy this contract; Struble paid me for writing this contract; I got half a basket of champagne sent to my room and twenty-five dollars in cash the same night; Mr. Cox paid me that.

(Plaintiff's counsel, on objection by defendant's counsel to the course of this cross-examination, stated that he had made the witness his own.)

WITNESS. Mr. Hibbard was not there on the occasion or the day when I copied this contract; I copied it in freight office at East St. Louis, upstairs, in the presence of other clerks, after business hours, in Mr. Bacon's, not Stevens' or Hibbard's, office; don't know anything about Mr. Hibbard going with Struble to Terre Haute to get it signed; Struble told me he was in a hurry to get the paper off, because he wanted to go to Terre Haute to get it signed.

NATHAN STEVENS, being sworn on behalf of defendant, testified in substance as follows:

I reside in St. Louis; am general Western agent of Pennsyl-
206 vania Company, and represent the Pittsburgh, Cincinnati and St. Louis Railway Company; have no connection with defendant; I am not employed by it at this time; was its general freight agent from September 1st, 1870, to August 1st, 1877, with my office in St. Louis; when I was first so employed John W. Conlogue was superintendent, up to July 1st, 1871; I knew the plaintiff; my impression is that the paper Struble handed to me in 1870 or 1871, of which he testified in this case as having given it to me for inspection, was in the handwriting of Dr. Stennett; am quite sure it was; Dr. Stennett was at the time the general agent of the Illinois Central Railroad Company.

(Witness being handed the paper given in evidence by plaintiff as the contract between him and defendant, said:) This is a copy of the paper I had in my possession a considerable time; noticed no interlineations in it; it was a paper different from this; have not read this all through; will read the first of it that differed from this, in this, that it not only had the St. Louis and Vandalia and Terre Haute Railroad for the second part, but it also had one or two other roads named in it, besides some
207 blanks left, so as to have other roads filled in; the other paper was in my hands for several months; it was given to me by Struble to look over it and to see what I thought of it. I gave it back to him or

to some one he sent for it; Struble, soon after I come onto the road in 1870, was introduced to me by Dr. Stennett, and as wanting to build stock yards in East St. Louis, and that he would build a general stock yard if he could get a contract with the various roads over there for feeding and taking care of stock, and that if he could get all the roads to patronize him he could make a good thing out of it; I told him I had no authority to make a contract of that kind to bind the company; afterwards he brought me that paper; that was after the yards were commenced; they commenced very soon after the first conversation; the paper was handed to me while the yards were being built; the paper was left with me for two months; don't know when the yards were opened; they were first kept by Struble and Frederick, and then by Cox, and a little while after that by Wiggins Ferry Company or by Hake and that company; was at the yards often for times daily, and every two or three days saw both Struble
208 and Frederick there; Struble told me frequently that the Wabash and the Ohio and Mississippi Railroads did business with him, loading stock from his yards; the yards were built for general stock yards, and intended for such; saw the cars of different roads in the yards on the tracks there; Vandalia cars to reach the yards had to go about a mile over and on the Ohio & Mississippi Railroad tracks; the shortest distance between the yards and the Vandalia Railroad was about three-fourths of a mile at the river bank from the depot to the yards, with the depots of the Chicago & Alton, the St. Louis Southeastern, the Ohio and Mississippi and the Wabash Railroads between; the National Stock were between 1871 and 1873, and opened in the fall of 1873; prior thereto the stock-yard business was scattered; every railroad had a small yard more or less; the yards at Venence were as large as Struble's; the Ohio & Mississippi, is the only railroad that has direct communication with Struble's yards; the tracks of the Wabash ran right along the yards, and by opening a gate stock could be driven from Struble's yards through chutes of the Wabash for loading it into their cars; the Vandalia never dealt in live
209 stock; the company solicited shipments over its line from the Strubles yards, and Struble & Frederick, and Cox afterwards, and their men loaded it, and this was continued as long as the yards were there; the owners of the stock ceased to bring stock there some time in 1873; as soon as the National Stock Yards opened everything went there and that became the stock market, and there was no more market at other yards; don't know whether the National Stock Yards are in or out of East St. Louis; don't know the lines there; they are arranged specially for a stock mart, with extensive pens, very fine offices and exchange buildings, a bank, and everything necessary to carry on a large business; stock buyers would go to Struble's yards as long as there was stock there for sale, but when the National Stock Yards opened owners took their stock there to sell and buyers had to follow them—to go where the market was; railroad' go wherever stock is; railroads do not, but owners do drive their stock to railroads from places where there is no railroad.

Defendant offered and gave in evidence a small map showing
210 the location of the Struble stocks, &c., and the National Stock Yards of East St. Louis.

(Here follows map marked page 210.)

211 (Witness being shown the map and having inspected it, and referring thereto, continued:) This map is correct (and, pointing out

marked lines on the map, explained how cars of the Vandalia Railroad, from the crossing of the Vandalia Railroad over the Ohio and Mississippi Railroad, only over the Ohio & Mississippi Railroad reached the Struble yards; and also pointed out the connection of the Vandalia with the National Stock Yards by way of a Vandalia track, marked on the map Brooklyn branch; and testified that this branch, before the building of the National Stock Yards, was used by the Vandalia as a track to Brooklyn and Venice, and that stock loaded at the National Stock Yards on cars of the Vandalia Railroad goes out to the main track over this branch and thence east, and that only in exceptional cases, when there would be obstruction in the way, would stock so loaded be run down over the East St. Louis and Carondelet track to East St. Louis, and thence east; that at quite a number of stations there are no agents and no billing facilities, but that freight or stock loaded at any such station is taken there, but is billed from the next billing station; that Hunter's station is merely a shipping station, with no agent there; that stock shipped from there is billed from East St.
212 St. Louis, most convenient billing station to it. There are three or four such stations between East St. Louis and Effingham. The Venice switch is the first station out of East St. Louis; it is from there the Brooklyn branch turns off into the National Stock Yards. The next is Hunter's station, seven miles out.)

(Witness, continuing, stated:) While I was on the road I employed sometimes Struble and sometimes Cox to go out there and load stock for us; Cox was at the Struble yards at the time; I asked him to come out and load and told him we would pay him for it; we did this because we had no men at the station to do it for us. Can't say whether Cox did business at the Struble yards on his own account; know he was there the last year of its existence. I recollect Struble's going away; had many conversations with him before that time; he always complained he was making no money, not making expenses, and that he would have to get out of that; this was the burden of his song all the time he was there, clear up to the time he left—some time in 1873; on the bills for charges for loading the yards went by several names, I think, as East St. Louis Stock Yards,
213 Struble's Stock Yards, Cox Stock Yards, &c. I think they were called East St. Louis Stock Yards. The Vandalia Railroad took stock out of the yards until some time in the fall of 1873, and as long as there was any stock there to be taken out by it; they never refused to go there for stock; if there was any there they always stood ready to go and take it. The effect of the opening of the National Stock Yards was to increase very largely the stock business at this point; before then yards were scattered and buyers had difficulties which they have not when the business is concentrated; as a result, a great deal more stock came to this point; this increase, of course, all went to the National Stock Yards; it came from everywhere west and Texas. What is not butchered there is shipped out to various points, as Louisville, Cincinnati, New York, Philadelphia, Baltimore, Buffalo, Boston, Cleveland, &c. It is loaded where it is namely, at the National Stock Yards, and not anywhere else, and by the National Stock Yards company's employees. The National Stock Yard Company won't let us, nor any one else, load stock in their yards, not even our own; think they allowed Mr. Cox to load a train or two, but don't know it. I be-
214 lieve they did; did not see it. Don't know when the yards built by Struble & Frederick were completed; they were doing something at

marked lines on the map, explained how cars of the Vandalia Railroad, from the crossing of the Vandalia Railroad over the Ohio and Mississippi Railroad, only over the Ohio & Mississippi Railroad reached the Struble yards; and also pointed out the connection of the Vandalia with the National Stock Yards by way of a Vandalia track, marked on the map Brooklyn branch; and testified that this branch, before the building of the National Stock Yards, was used by the Vandalia as a track to Brooklyn and Venice, and that stock loaded at the National Stock Yards on cars of the Vandalia Railroad goes out to the main track over this branch and thence east, and that only in exceptional cases, when there would be obstruction in the way, would stock so loaded be run down over the East St. Louis and Carondelet track to East St. Louis, and thence east; that at quite a number of stations there are no agents and no billing facilities, but that freight or stock loaded at any such station is taken there, but is billed from the next billing station; that Hunter's station is merely a shipping station, with no agent there; that stock shipped from there is billed from East St.
212 St. Louis, most convenient billing station to it. There are three or four such stations between East St. Louis and Effingham. The Venice switch is the first station out of East St. Louis; it is from there the Brooklyn branch turns off into the National Stock Yards. The next is Hunter's station, seven miles out.)

(Witness, continuing, stated:) While I was on the road I employed sometimes Struble and sometimes Cox to go out there and load stock for us; Cox was at the Struble yards at the time; I asked him to come out and load and told him we would pay him for it; we did this because we had no men at the station to do it for us. Can't say whether Cox did business at the Struble yards on his own account; know he was there the last year of its existence. I recollect Struble's going away; had many conversations with him before that time; he always complained he was making no money, not making expenses, and that he would have to get out of that; this was the burden of his song all the time he was there, clear up to the time he left—some time in 1873; on the bills for charges for loading the yards went by several names, I think, as East St. Louis Stock Yards,
213 Struble's Stock Yards, Cox Stock Yards, &c. I think they were called East St. Louis Stock Yards. The Vandalia Railroad took stock out of the yards until some time in the fall of 1873, and as long as there was any stock there to be taken out by it; they never refused to go there for stock; if there was any there they always stood ready to go and take it. The effect of the opening of the National Stock Yards was to increase very largely the stock business at this point; before then yards were scattered and buyers had difficulties which they have not when the business is concentrated; as a result, a great deal more stock came to this point; this increase, of course, all went to the National Stock Yards; it came from everywhere west and Texas. What is not butchered there is shipped out to various points, as Louisville, Cincinnati, New York, Philadelphia, Baltimore, Buffalo, Boston, Cleveland, &c. It is loaded where it is namely, at the National Stock Yards, and not anywhere else, and by the National Stock Yards company's employees. The National Stock Yard Company won't let us, nor any one else, load stock in their yards, not even our own; think they allowed Mr. Cox to load a train or two, but don't know it. I be-
214 lieve they did; did not see it. Don't know when the yards built by Struble & Frederick were completed; they were doing something at

them all the time for two or three years; they were completed for doing business in the fall of 1870. Mr. Hibbard is not here now, and is sick, and has been for three weeks.

Cross-examination:

I am unable to distinguish the writing of the signature of President McKeen by himself from that of his secretary, who often signs his name to letters. I left the defendant August 1, 1877. Different agents of defendant used different names on the bill-heads; some used the name "St. Louis, Vandalia, Terre Haute and Indianapolis Railroad Company;" some "Vandalia Line;" but all were used in the transaction of the business of the defendant, of which railway Mr. McKeen is president; H. W. Hibbard is the general freight agent, and was ever since I was on the road, and is yet; he was not able to go away by himself two or three weeks ago; he was taken in a special car; he was very sick; don't think he is in a condition now to give his deposition, nor was he recently; don't know that Mr. McKeen is sick. Know nothing of Dr. Stennett now; have not seen
215 him for several years; don't know where Mr. Bacon is; heard from him from San Francisco; he left in 1875 or 1876.

Plaintiff's counsel (handing witness a paper) asked him with reference thereto: Do you know the kind of shippers' contract issued by defendant from the National Stock Yards? Witness answered: I presume from the signature they are this kind—this is my understanding.

(Plaintiff's counsel then offered the paper in evidence, being dated March 25th, 1880, and is in regard to the shipments of two car-loads of hogs from the National Stock Yards, and from East St. Louis, during March, 1880. Defendant's counsel objected to the paper being given in evidence. The court overruled the objection and admitted the paper in evidence, to which ruling of the court the defendant at the time excepted.)

Form 114.

"VANDALIA LINE."

LESSEE TERRE HAUTE & INDIANAPOLIS R. R. CO., ST. LOUIS, VANDALIA & TERRE HAUTE R. R.

SHORT LINE TO ALL EASTERN CITIES.

No. 143.] EAST ST. LOUIS, ILLS., *Mc'h* 25, 1880.

Received from Keys, Lancaster & Co., % Lynn & Co., the following described packages in apparent good order (contents and value unknown), consigned as marked and numbered in the margin, to be transported over the line of this road to the company's freight station, at its terminus, and delivered in like good order to the consignee or owner at said station, or to such company or carriers (if the same are to be forwarded beyond said station) whose line may be considered a part of the route, to the place of destination of said goods or packages, it being distinctly understood that the responsibility of this company as a common carrier shall cease at the station where delivered to such person or carrier; but it guarantees that the rate of freight for the transportation of said packages from the place of shipment to Cincinnati, O., shall not exceed 18c. per 100 and charges advanced by this company, upon the following

CONDITIONS.

☞The owners or consignee to pay freight charges, as per specified rates, upon the goods as they arrive.

☞Freight carried by this company must be removed from the station during business hours on the day of its arrival, or it will be stored at owner's risk and expense, and in the event of its destruction or damage from any cause while in the depot of the company it is agreed that said company shall not be liable to pay any damages therefor.

It is agreed and is a part of the consideration of this contract that the company will not be responsible for leakage of liquids, breakage of glass or queensware, the injury or breakage of looking-glasses, glass show-cases, picture frames, stove castings or hollow-ware, nor for injury to the hidden contents of packages, nor for the loss of weight or otherwise of grain or coffee in bags, or rice in tierces, nor for the decay of perishable articles; nor for damages arising to any articles carried from the effect of heat or cold, nor for the loss of nuts in bags, or lemons or oranges in boxes, unless covered by canvas, or for loss or damage to goods occasioned by providential causes, or by fire from any cause whatever, while in transit or at stations, or loss of flour or any other property caused by bad or insufficient cooperage.

The company will not be responsible for damages on tobacco, unless it is proved to have occurred during the time of its transit over this road, and of this notice must be given within thirty hours after the arrival of same.

Freight to be paid upon the weight of the company's scales.

☞This company will not be responsible for accidents or delays from unavoidable causes. The responsibility of this company as carriers to terminate on the delivery of the freight, as per this bill of lading, to the company whose line may be considered a part of the route to the place of destination of such goods or packages.

This company will not be responsible for loss or damage to property, unless notice of such loss or damage is given to the delivering party within thirty-six hours after the property has been delivered.

In the event of the loss of any property for which the carriers may be responsible under this bill of lading, the value and cost of the same at the point and time of shipment is to govern the settlement for the same. And in case of loss or damage of any of the goods named in this bill of lading for which this company may be liable, it is agreed and understood that they may have the benefit of any insurance effected by or on account of the owner of said goods.

Gunpowder and friction matches not carried. This receipt must be presented without alteration or erasure.

Marks and consignees.	Articles.	Weight. (Subject to correction.)
Weber, Laper & Co., Cincinnati, O., via I. C. & L. Charges advanced. Contents and value of packages unknown.	(2) two d. d., hogs, 216 head, more or less; cars 603 Van., 765 T. H. I.	

M. S. McKEEN, *Stock * General Freight Agent,*
Per KEIL.

* Writtrn over "General Freight."

216 WITNESS. I have no personal knowledge of their using these contracts. They have an agent there. He can tell you. I can't state the exact time Struble, after his introduction to me by Dr. Stennett, handed me that paper spoken of in my direct examination. I did not read all this paper (the paper given in evidence by plaintiff as the contract between himself and defendant), but what I did read of it differs in this, that in the paper Struble gave me there were more railroads named in it as parties of the second part. I don't know what Struble's conversation with anybody else but myself might have been, but with me it was always understood and desired that he should have a general yard for all live stock. Our conversations were always to that effect. It was always understood that I had no authority to agree with him about any such contract, and may have told him so dozens of times, and he had no occasion to treat with me further on the subject; am not positive whether it was February, 1872, or February, 1873, Struble went away. I know it was during the prevalence of the epizoötic, while the Mississippi was frozen over.

217 Redirect examination:

This paper (the last given in evidence), 25th March, 1880, is for two double-deck cars, 216 head of hogs; d. d. stands for double-deck cars. The letter of introduction by me given July 8th, 1874, to Mr. Cox, as connected with the National Stock Yards; there were then no other stock yards there. Cox claimed to me at the time that he was then in business there.

W. S. PULNAM, recalled for defendant, testified:

I reside in East St. Louis; have know' plaintiff since 1870. In 1870 till July 1st, 1871, I was superintendent of telegraph on Vandalia Railroad and clerk or secretary of the superintendent, J. W. Conlogue, with office here in St. Louis. I know the location of the yards in controversy. I took possession of them about November 1st, 1873.

(Plaintiff objected to the testimony as having been excluded before. The court overruled the objection and allowed the defendant to show whether the parties continued their yards at the same place during this time. To the ruling of the court the plaintiff at the time excepted.)

WITNESS. The shipper or owner, or party in charge of the stock, controlled the shipments of stock from these yards, and determined over what roads should be taken out.

218 Three several papers, each purporting to be a monthly statement of the transaction of business at the East St. Louis Stock Yards, one for November, 1873, one for December, 1873, and for January, 1874, were then offered and given in evidence by defendant, and as follows:

219 *Nov'r, 1873.—Report.*

EAST ST. LOUIS, *December* 24, 1873.

Wiggins Ferry Co. in a/c with East St. Louis Stock Yards, month of November, 1873.

Nett receipts		218 62
Expenses:		
Services F. C. Cox	100 00	
Do. Jno. Viner	50 00	
Extra labor	12 50	
Use wagon & horses	15 00	
Bill of Rosewell & Co., Nov. 6	3 95	
" " " " " 26	8 95	
		190 40
Nett profits		28 22

DR.

To Ferry Co., ½ profits	14 11	
" " check for freight	116 50	
" S. S. Hake, ½ profits less bill $8.00	6 11	
" F. C. Cox, balance	10 63	
S. Rosewell & Co	12 90	
		160 25

CR.

By Cox's check	31 35	
Paid S. S. Hake	6 11	
" F. C. Cox	10 63	
" S. Rosewell	12 90	
By cash herewith to balance	99 26	
		160 25

Respectfully submitted.

W. S. PUTNAM.

220 Cash remitted herewith:

To balance report	99 26
Order for ferriage Dec. 1	16 30
" " " 11	33 60
" " " 27	30 50
" " " 29	3 80
For S. Rosewell & Co	12 90
	$196 36

221 *Dec., 1873.—Report.*

EAST ST. LOUIS STOCK YARDS,
Jan'y 1, 1874.

Wiggins Ferry Co. in ⅜c with East St. Louis Stock Yards, mo. December, 1873.

1,870 hogs, w'h'g 5c	$893 50	
1,520 " " 2 1/29	38 00	
Total scales		131 50
580 bu. corn, @ 40c		232 00
22 bls. hay (8,360 lbs.), @ 2.00		44 00
Bedding 60 cars, @ 1.00	60 00	
" 22 " " .75	16 50	
		76 50
Loading 95 cars Van. R. R., @ 2.00		190 00
		$674 00

CONTRA.

Services F. C. Cox		100 00
" Jno. Viner		50 00
Extra labor		38 00
Watchman		5 00
Board, 1 man (for services)		20 00
Horses & wagons		25 00
Bedding, cost		9 50
Extra allowed Joe by Putnam		8 00
		255 50
Nett profit		418 50
Due S. S. Hake	209 25	
" Wiggins Ferry Co	209 25	
		418 50
Wiggins Ferry Co., Van. shipping bill	190 00	
Enclose c'k	19 25	
		$209 25

F. C. COX.

222, 223 *Jan'y report.*

EAST ST. LOUIS, *Feb'y 2d*, 1874.

Wiggins Ferry Co. in ⅜c with E. St. L. Stk Y'rds, Mo., January, 1874.

Scales { 150 hogs., 5c. / 422 " 2 1/29 }	18 05	
31 bu corn, 30 c	9 30	
Bedding	65 00	
Shipping ⅜c	222 00	
		$314 35

CONTRA.

Services F. C. Cox		
Do. Viner, 3 weeks & 2 d'ys	100 00	
" extra (ay'n, Joe)	40 00	
Cost bedding	48 50	
Fixing *shoots*, & 2 kegs nails, $10.00	6 50	
2 horses & wagons	59 50	
Board, 1 man, for services	20 00	
		290 50
Nett profits		823 85

224 These papers being handed to witness, he examined, and referring to them, testified:

I identify these as the reports of business at these yards for November and December, 1873, and January, 1874, under my own supervision; was employed by Wiggins Ferry Company; Mr. Cox had the immediate control; we, Wiggins Ferry Company, paid him one hundred dollars per month salary; he was the practical man; I attended to the accounts; the payments received for loading went to the Wiggins Ferry Company; I made the bills out and the secretary collected them; neither Cox nor I had authority to collect bills; I saw Mr. Struble in the latter part of 1870 frequently in the office of the Vandalia Railroad Company in St. Louis with Dr. Stennett, and Mr. Stevens, and with Mr. Conlogue, and other parties of the road; Struble had a writing which he told me was a contract that he wished to get signed by some officer of the company, and also said that he expected to establish general stock yards here, something like the ones in the East, to do a general stock business, and said he tho't it would pay well; he had the paper, which I read, and in one or two instances
225 he sat down at my desk and made some alterations in it, and in other instances he got me to make some interlineations in it; I don't remember what the nature of these alterations and interlineations were; no railroad company was named in the paper; there were blanks left where he told me the names of railroad companies were to be put in; he told me he expected to get Mr. Griswold to sign it, who was then either general superintendent or president of the Ohio and Mississippi Railway Company; in fact, one time he told me he was going to take the contract to him to see if he would not sign it, and said he thought the other companies would come in too, but mentioned none by name; Mr. Conlogue was never present at any of these conversations; his office was seperate from mine, though adjoining; Struble told me Mr. Conlogue refused to sign the contract, and had talked very rough to him about it; Mr. Conlogue was superintendent of the Vandalia Railroad at the time; the conversations extended over two months, the end of 1870 and beginning of 1871; I never saw more than one draft of that paper; it was altered in more than one place; Struble always had the paper when I saw it; he would take it out of his
226 pocket and put it back again.

Cross-examination:

When I saw the paper it had the name of no company in it, nor Struble's; there were blanks for names; what I at any time wrote in it was in

the body of it; never a name; saw the paper last early in 1876; I left the road early in July, 1871; I never read the paper which is in evidence here; I only looked at it; saw it in your (plaintiff's counsel) office about eight or ten days ago; was sent to look at it to identify the handwriting; besides the absence of names in and signatures to the paper I saw Mr. Struble have and that in evidence, I notice also the difference in the price; in that this was $1.50. I remember this from the fact that Mr. Struble said he thought it ought to be $2.00. I went to look at the paper in ev'dence, at the request of defendant's attorneys, to find out, if I could, who wrote it. There is a very great similarity between the signature of Mr. McKeen, made by himself, and that of his secretary, Farrington; without a special thing to call his signature to his mind, I don't think Mr. McKeen could tell his own from that made by his clerk.

227 N. S. McKEEN, recalled for defendant, testified as follows:

I am defendant's stock agent at the National Stock Yards, and have been since August 23d, 1878; not for the last three or four years has there been any stock which was loaded at the National Stock Yards run down into East St. Louis in order to be taken east, except occasionally some cars, and not very often—very seldom; only when a few cars are loaded ahead of time they are taken down to be made up into a train at St. Louis. The shipping contracts for live stock transported by railroads entitles the shipper to ride free on the train and to return free on a passenger train; the owner or consignor generally accompany the stock as shippers; sometimes he hires a shipper to accompany it; the local agents on the line of the road load the stock that comes in; they have charge of it at the stations on the road; I don't know how stock that comes in is billed; it goes to the National Stock Yards by direction of the local agents; it is there unloaded by the National Stock Yard Company; I never see the bills; the stub I see shows it to be billed to the National Stock Yards.

N. P. ANDERSON, sworn on the part of defendant, testified in substance as follows:

228 I live in St. Louis; am live-stock agent of the Indianapolis and St. Louis Railroad Company, now located at the National Stock Yards, and have been in the same business since 1868; I knew Struble's stock yards; was there; the opening of the National Stock Yards done away with the other yards in the vicinity on account of their better facilities for handling stock. The duties of my office in a general way are to supervise the shipping of live stock I can, also to see that the stock is properly prepared for loading and properly loaded, and that the trains get on time. The western roads bring the live stock to the National yards, and did to the other yards from where railroads took it out to take east. The owners of the stock consign it to the National Stock Yards, and that is the reason why it goes there. By western roads I mean roads on the west side of the Mississippi. Stock is brought to the National yards to be sold and forwarded east, and of course is fed there. It is loaded at the National Stock Yards by the National Stock Yard Company, under the direction of the road that takes it out. The loading there is control'ed by the National Stock Yards; no one else has anything to do with the load-

ing; it is the stock agent's duty to see that the cars are there to load
229 and prepared for loading. Five railroads do business at the National Stock Yards. Each has an agent there, like myself; know the Struble yards; had a place or chutes to load stock on, but to what capacity I don't know; the Indianapolis and St. Louis Railroad loaded some stock there; it had only a limited business there. The Struble yard was a general yard for East St. Louis, and all roads that could get in did business there; and I believe all the roads got in. I don't remember how long business was done there; two or three years; the yards were capable of doing the business at that time. Business has increased since then, and it was not capable of doing the business now. I know the Vandalia road did business there, but can't say whether the yard's facilities were sufficient for it.

Cross-examination:

The Vandalia Railroad does its stock business for East St. Louis at the National Stock Yard, and so does the Indianapolis and St. Louis Railroad. This paper handed me is one of my bills of lading made out in the usual form. We bill from Venice, and note on the right-hand corner that the stock came from the National Stock Yards. We bill from "Venice station;" the rate is given from East St. Louis. Rates from Venice and East St. Louis are alike.

230 (Plaintiff offered in evidence a bill of lading as given by the Indianapolis and St. Louis Railroad Company, and signed by the witness as agent, dated March 18th, 1880, for two cars of stock.

Defendant's counsel objected, as incompetent and irrelevant; the court overruled the objection and admitted the paper in evidence, to which ruling of the court the defendant at the time excepted.)

231 [Form 25.—11, 11, 78, 5, m.]

INDIANAPOLIS & ST. LOUIS RAILROAD.

FAST FREIGHT LINE.

General freight office: NE. corner Third and Chestnut sts., St. Louis, Mo.
Route: I. & St. L. Bee-line, at G. W. & Erie.

Contents of packages unknown.

[Train of cars.]

Marks:
Struble & Voeterr,
Jersey City, N. J.

Contract rates.

Charges advanced from St. Louis to Jersey City, 55c. per 100 lbs.; per barrel.

[Stamp.]

E. ST. LOUIS, *M'ch 18th*, 1880.

Received from Struble & Voeterr the following packages, contents, and value unknown, in apparent good order, viz:

2 D. D. hogs, said to weigh 44,000.
254 m. or l.

Cars 2226 C. C. C. & I.
2088 "

Consigned as marked and numbered in the margin, to be transported over the line of this road to the company's freight station at its terminus, and delivered in like good order to

the consignee or owner at said station, or to such company or carriers, if the same are to be forwarded beyond said station, whose line may be considered a part of the route to the place of destination of said goods or packages; it being distinctly understood that the responsibility of this company as a common carrier shall cease at the station where delivered to such person or carrier:

232 Provided that no carrier or company forming a part of the line over which said freight is transported will be responsible for demurrage or detention at its terminus, or beyond, or any part of the line arising from accumulation or over-pressure of business under the following conditions:

☞The owner or consignee to pay freight or charges as per specified rates upon the goods as they arrive. Time not guaranteed.

☞Freight carried by this company must be removed from the station during business hours on the day of its arrival, or it will be stored at the owner's risk and expense; and in the event of its destruction or damage from any cause while in the depot of the company, it is agreed that the company shall not be liable to pay any damage therefor.

☞It is agreed and is a part of the consideration of this contract that the company will not be responsible for the leakage of liquids, breakage of glass or queensware, the injury or breakage of looking-glass, glass show-cases, picture frames, stoves, castings, or hollow ware, not for injury to the hidden contents of packages; nor for the loss of weight or otherwise of grain or coffee in bags, or rice in tierces; nor for the decay of perishable articles; nor for damage arising to any article carried from the effects of heat or cold; nor for the loss of nuts in bags, or lemons or oranges in boxes, unless covered with canvass, or loss or damage to goods occasioned by providential causes, or by fire from any cause whatever while in transit or at stations.

The company will not be responsible for damages on hemp, cotton, or tobacco, unless it is proved to have occurred during the time of its transit over this road, and of this notice must be given within thirty hours after the arrival of the same.

233 Freight to be paid on the weight by the company's scales. This company will not be responsible for damages or delays from unavoidable causes. The responsibility of this company as common carriers to terminate on the delivery of the freight as per this bill of lading to the company whose line may be considered a part of the route to the place of destination of said goods or packages.

In the event of the loss of any property for which the carriers may be responsible under this bill of lading the value or cost of the same at the point and time of shipment is to govern the settlement of the same; and in case of loss or damage of any goods named in this bill of lading, for which this company may be liable, it is agreed and understood that they may have the benefit of any insurance effected by or on account of the owner of said goods.

Flour barrels and all packages subject to necessary cooperage at owner's expense.

W. P. ANDERSON, *Agent.*
T.

234 WITNESS. This bill of lading is for two cars. The stock agent issues passes to the men who go in charge of the stock; stock coming over the western roads generally is billed to St. Louis and stops there, unless it is billed through to the East; very often stock is billed right through to Buffalo, New York; stock coming from the West that goes beyond St. Louis is contracted for in various ways by some agent in the West, or by the owners of the stock; the most of the roads that run out from here East have no agent West; don't know whether the Vandalia has or not. Stock coming from the West consigned to the East, for instance to Buffalo is, by designation on the bill of lading, either to go via the Union Stock Yards at St. Louis, or the National Stock Yards. Of course somebody is with the stock; if no one is with the stock the road takes charge of it. As stock agent I have nothing to do with stock that is coming in; stock arriving at East St. Louis without other designation is taken to the stock yards. We have no facilities at East St. Louis for unloading, it is sent to the National Stock Yards. We have no specific contract with the National Stock Yards about how many cars we should fur-
235 nish; if there is any stock to be shipped from the national over our road I furnish the cars. There is no competi'on now at the National Stock Yards between the railroads for shipping stock East; they have a pooling arrangement. Before that arrangement the best man won; success then depended upon the management of the road, and the way stock was managed after they got it. The same care is taken of it now—we are bound to do it. Can't remember when or how much stock we took out of the Struble yards; remember two occasions; think it was in the summer of 1871—was there; there were from ten eleven cars the first time, and then some more; this is all I can personally remember, though I am very sure there were more. I know the Ohio and Mississippi Railway Company shipped stock out of Struble's yards the same summer, but how much I can't say, kept no memorandum or account; they had several parties there buying and shipping; there was more than one shipment made, but not very many, I suppose; I know nothing of the number of cars shipped by that road out of Struble's yards; the Wabash had chutes right adjoining the Struble yards, and also loaded and took stock
236 out of it; a great many cars were loaded there—could not approximate the number. The Struble yards were sufficient to do the business of the Vandalia Railroad at that time. The Vandalia does now a very large business; they had over 4,000 cars last year. I don't know, but should think they shipped between 2,000 and 3,000 cars in 1873. I think 3,000 cars would probably have crowded the facilities of Struble's yards in 1873; don't know that 1,000 cars more a year would strain a yard having the capacity of 3,000 per year without strain.

Redirect examination:

I said I did not think the Struble yards were adequate for the present business of the Vandalia Railroad, because they do so much more business in double decked hogs and sheep. Stock that came in on our road is not

consigned to East St. Louis; it does not happen often that stock comes in without other designation than East St. Louis. Stock consigned over our road to somebody else in East St. Louis would be held there for him, and if no one is named as consignee it is sent to the National Stock Yards. It is a rule that a shipper comes with stock, who takes care of it; there is always a man in charge of stock coming from the West, who is em-
237 ployed by the owner of the stock.

E. L. MILLS, being sworn on behalf of defendant, testified in substance as follows:

I reside in Collinsville, Illinois; am station agent of the Vandalia Railroad at East St. Louis since August 1st, 1877; before then was night clerk in the freight office at East St. Louis, from March 12th, 1872; am acquainted with the shipment of live stock arriving at East St. Louis over that road; as a general thing stock so arriving is consigned to the National Stock Yards, and some one is in charge. If stock is consigned to some one at East St. Louis he is notified of the stock's arrival; if not called for within a reasonable time it is sent to the National Stock Yards, consigned to the party to whom it is billed at East St. Louis. I adopted that system, and have always done so since I have been station agent, and, if I recollect right, it was done before this; can't say whether this was done since the opening of the National Stock Yards, but from my own knowledge this was done since July 1st, 1876. During the existence of
238 the Struble yards I remember Mr. Cox, connected with them, to have come down and helped to drive stock that had arrived over the Vandalia Railroad to the Struble yards; the stock was unloaded into the Vandalia yards; it had been consigned to East St. Louis and there unloaded put in the Wabash yards—I mean the Struble yards. The practice of shippers coming along with their stock has been in vogue ever since I can remember; I understand these shippers have charge of the stock on the trains during transportation, and have to see that it is kept on its feet. If consigned to East St. Louis, if the shipper comes in and shows by his bill of lading that he is the proper party, and says, "I want my stock to go thus and so," it is sent according to his directions.

Cross-examination:

The system of sending stock consigned to East St. Louis, and not called for on notice, as stated in my direct examination, was adopted July 1st., 1876; this is as far back as I remember; it might have been the system before; I am under the impression that the agent before me used to treat stock in that way since the building of the National Stock Yards, but I can't say for certain; it is my understanding that that was the
239 practice since the National Stock Yards were ready to receive stock.

Redirect examination:

To the best of my recollection the National Stock Yards were ready to receive stock early in 1874; can't remember back any farther; I am under the impression it was after the formal opening of the yards that stock commenced to move that way; I can't fix the date of the opening of the National Stock Yards; remember it only by the special train going there on that occasion; this is fresh in my memory. I don't know Mr. Struble;

knew Mr. Cox well; I never heard that Mr. Cox was refused any loading of stock.

CHARLES A. JONES, being sworn on the part of the defendant, testified in substance as follows:

I reside in East St. Louis; am superintend' of the National Stock Yard; have been there since June 1st, 1871. The National yards were opened for business on the 21' or 22' of November, 1873; had loaded some stock before that. I knew Mr. Cox; don't know Struble; knew Cox by sight only; saw him at the National Stock Yards the day the first train was loaded there—about June 18th, 1873; Allerton, the president, and
240 Thomas White, the yard master of the National Stock Yards, were present; Cox came just as the last car was being loaded; it was for the Vandalia Railroad; I think the cattle was Barney Hunter's; we were loading for the National Stock Yards; Cox never loaded any stock in these yards to my knowledge; was there from 12th of June, 1871, till they were completed, and since then all the time; the National Stock Yards controls the loading there; they do not allow anybody else to load stock up there, unless one would volunteer to help; often boys, for the fun of the thing, help load; we would not allow anybody else to load there.

Cross-examination:

The first stock loaded was for the Vandalia Railroad. We have no contract about loading with that company; we charge them the regular rate; we know well that all the stock that comes into East St. Louis off the Vandalia comes to the National Stock Yards.

Redirect examination:

A great deal more stock goes out over the Vandalia Railroad than comes in over it; can't tell the proportion; to the best of my knowledge stock coming in over it comes consigned to the National Stock Yards; the stock shippers come along with it.

241 THOMAS H. WHITE, being sworn on the part of defendant, testified in substance as follows: I reside in East St. Louis, since 1871; was yard-master of the National Stock Yards from the commencement of the receiving of stock till 1877; don't know Struble; knew Cox at the National Stock Yards in 1873; some time in June, the time the first stock come up there, the National Yards Company loaded that stock; it is the same stock Jones testified about; I loaded them and ordered the men to load them for the National Stock Yards Company; they were fed and watered there, and ordered loaded out over the Vandalia Railroad; all had been loaded except perhaps three or four cattle to be put on the last car, when Cox came and said, "I am here in time, any way, to help drive one any how," and jumped down and grabbed one and twisted its tail going into the car. I had charge of the whole cattle department there at that time; I had control in the employ of the National Stock Yards of the loading exclusively; the cattle were ordered loaded on Vandalia cars by Hunter; the cattle belonged to him; they had arrived con-
242 signed to him and were shipped out in his name; Cox was present several other times at the loading of cattle; when we wanted to

load out and wanted any cars I used to order them through Cox; I naturally supposed he was the stock agent for the Vandalia Railroad at that time; Mr. Menzie sometimes came up for Cox, and then I ordered cars through him; the Stock Yards Company would load them, and Cox two or three times brought two or three men up there and helped us to load stock; but not at our request; we had men there all the time for the purpose; he volunteered to do it and we did not hender him; he diden't help load more than three or four trains that way; hired men from him to work for us when we needed; this was in June or July, 1873; never knew of any agent of the Vandalia Railroad Company preventing anybody from loading stock at the National Stock Yards, nor did any such agent attempt to control or direct such loading; did not hear Menzie testify; saw Menzie at the yards; he came in Mr. Cox's place as his deputy;
sometimes he helped load the same as all stock agents do now;
243 I took him for the stock agent of the Vandalia Railroad; Cox gave himself out as such; am sure he did; don't think Menzie did. I know W. P. Anderson; he is a stock agent.

Cross-examination:

I had heard of Cox before, but never saw him till he came at the time of the loading of the first train at the National Stock Yards, when there were but three or four cattle more to load. I saw him there afterwards, not frequently, but a dozen or so times. I sometimes applied to him for cars for the Vandalia Railroad. He did not always have them brought up; occasionally I had considerable trouble and was considerably embarrassed by Cox not coming up to time. Cox and Menzie did not impress me as though they had a right to controle the loading, but the controle of cars, as any other stock agent of a railroad company does. Cars were brought there for no other purpose than loading. We always had the cars at the National yards. I can't say whether the first train came bedded or not; can't recollect. Cox's men came up two or three times to help to load some.
Cox or Menzie, or both, were with them. They were not there
244 each time on the occasion of loading stock; they came at times to get the billing of it, as any stock agent would, and when they came they came about the business of the Vandalia Railroad. Mr. Cox and Menzie did not continue more than a month or six weeks to come up to see about the Vandalia stock.

H. B. Vail, being sworn on behalf of defendant, testified in substance as follows:

I reside in East St. Louis, and was there from 1871 to 1874; was foreman and book-keeper at the National Stock Yards; was foreman from the time I commenced in 1872; took charge of the books; took charge of the books when they commenced shipping cattle in June, 1873—the cattle-books only; don't know Mr. Struble; know Cox; saw him at the National Stock Yards in the summer of 1873, on the occasion spoken of by Jones and White. The first time I recollect seeing Cox was one day with three colored men, coming up the alley in the yards. I was standing talking with Mr. Allerton, the president, in a cross-alley. Cox said to Allerton, "I have come to load stock." Allerton said, "What stock?" "Stock

going on the Vandalia." Allerton said, "You can't load them;
245 we load stock here ourselves." Cox said, "Well, I will come down and see them loaded, anyway;" and he went off with his men. The National Stock Yards men always did and now controle the loading there; the company would not allow anybody else to come there to load as a business.

Cross-examination:

I think it was in August, but am not positive—it was some time in the summer of 1873—I saw Cox there as stated. He stated he came there to load stock going out on the Vandalia Railroad, and the president told him he should not load it.

ISAAC H. KNOX recalled for defendant.

I was treasurer of the National Stock Yards in the fall of 1873. The Vandalia Railroad did not at any time seek to controle the loading of stock at the National Stock Yards; have been in charge of the yards from January, 1875, and speak from that time; before then I was not at the yards; never heard that any of defendant's men refused plaintiff the right or privilege of loading stock from the National yards. The revenues of the yards are derived chiefly from yardage, feeding, loading, unloading, and bedding; the yards were erected for that purpose.

246 Cross-examination:

Never heard the Vandalia Company making an application to secure for Mr. Struble the chance of loading stock there; I think they would not have secured it; had they made such an application we should certainly refuse to allow anybody to load stock at the yards except on our account and for our benefit. The Vandalia Railroad could not procure us to let Struble load there.

Question. If they gave the stock to Struble to load they would have to take it to another place to let him load it?

Answer. I will answer the question generally. We should refuse to let anybody use our facilities for loading cars and they to derive the compensation; if Mr. Struble wanted to load them we would load for him, but we would make a charge for it.

JOHN W. CONLOGUE, being sworn on behalf of defendant, testified in substance as follows:

I reside in St. Louis; was superintendent of defendant's road from Terre Haute to East St. Louis till January, 1871, with office at St. Louis; commenced October, 1868; know Mr. Struble; met him several
247 times; Struble was connected with the stock business; I think he built a stock yard at East St. Louis; don't know who built them; they were called Struble's Stock Yards; had conversations with him several times about making contracts, but refused to make any, and would have made none except from time to time for doing our business; I made no permanent contract, but only for from time to time as might be required; it appears to me that he presented me, at one or two times, a draft of a contract, but I was no party to it; I believe there was a memorandum of a contract that he wanted me to sign; I told him I would not make a contract of that kind.

Cross-examination:

I was not a member of the board of directors; it was some time before I left the Vandalia Railroad that I heard about that memorandum for a contract. It is supposed that a president ranks other railroad officers. It is the superintendents to do the business of the road; and if it is anything out of the daily routine it is to be approved by the president. So far as the control of the superintendent is concerned, he is supposed to
248 be the final arbiter of matters submitted to him; he could veto any act of the superintendent; but the controller of the corporation, I think, is the board of directors; it would depend upon what business it is to say whether the president was the superior officer; I am not familiar enough with law to say whether, outside of the board of directors and leaving the board out of view—whether he has higher authority than any other ministerial officer. The superintendent *in* the manager of ministerial matters that occur from day to day in the management; in the general business of the company, from day to day, the president is the superior officer of the superintendent—that would be my opinion of it. I was superintendent of the division of railroad from Terre Haute to East St. Louis; the *line* was longer and extended to Indianapolis; I am not familiar enough with the freight department to know whether they treated with Struble directly relative to the stock business; there was a general freight agent, H. W. Hibbard; the freight business was under his special supervision, not under mine; it was Hibbard's business to look after the
249 general freight business; of course I was consulted in some cases, but that was his special business.

This was all the evidence introduced. Thereupon the court charged the jury as follows:

ISAAC J. STRUBLE
vs.
TERRE HAUTE & INDIANAPOLIS RAILROAD Company.

The plaintiff in this case sues to recover damages for the breach of a contract alleged to have been entered into between plaintiff and defendant. The defense rests upon several grounds, one of which is that the contract sued on is not the contract of the defendant. This presents the first issue for your consideration. Is the contract sued on the contract of the defendant?

The contract is in the name of the St. Louis, Vandalia, Terre Haute and Indianapolis," which *which* is not the corporate name of the defendant. It is alleged, however, by the plaintiff, that this name was adopted and used by the defendant in the transaction of its business; that it was its custom to use it in the transaction of its business, and that it so used it in making this contract.

250 If you find from the evidence that these allegations are true, then you are instructed that the contract may be valid notwithstanding the use of this name or designation instead of the corporate name. If, however, you find that these allegations are not true, and that the name in question was not used by defendant as claimed by the plaintiff, then it will follow that the plaintiff cannot recover.

In order to find that the contract sued on was the contract of defendant, you must believe from the evidence not only that the name used was employed by the defendant, but also that the contract sued on was executed by the authorized agent of the defendant, or, if the agent was not authorized, that the contract was afterward ratified by defendant.

The contract in evidence shows that it was signed by the president of the defendant corporation, and it is admitted that he was the chief executive officer of the corporation. It is also shown that he is a member of the board of directors, but there is no other proof as to the nature or extent of his authority.

If you find that the president of the corporation was not author-
251 ized to sign the contract sued on, you will next enquire whether the defendant has since ratified the same. If the contract was made by the president without authority, but was subsequently ratified by the defendant, this renders it valid so as to confer upon the other contracting party the same rights and remedies as if the authority therefor had originally been conferred upon the president. Such ratification may be shown by circumstances and from the acts of the defendant. It is not necessary to show an express *not*ification, but such facts must be shown as will satisfy the *in*jury that defendant, with notice of the president's action, has approved and endorsed the same; such a *not*ification may sometimes be inferred from the acts of the company.

If the jury find from the evidence in this case that the contract in question was signed by the president of the company, that it became known to the officers and agents of the company engaged in transacting its business at East St. Louis, that they, in conducting such business, recognized and acted upon contract, receiving for the company the benefits thereof for a considerable period, and requiring its performances on the part of the plaintiff; that defendant, through its agents and officers, had pos-
252 session of the contract, and made payments from time to time to plaintiff under it, and that defendant, through such officers and agents, had knowledge of the facts, if it was a fact, that plaintiff was expending money in building stock yards, relying upon said contract, and largely, for the purpose of carrying the same out, these facts would amount to a ratification by the defendants of the contract sued on, or work an estopp*le* against the defendant. If the jury find from the evidence that the contract sued on is the contract of the defendant, they will then inquire whether the same has been violated by defendant as alleged.

It is incumbent on the plaintiff to show that he (pl'ff) kept the contract on his part and that the defendant violated it. The instrument sued on is before you; its terms are plain. It specifies clearly the duties of both parties under it; you will consider and decide in the light of all the evidence in what particular, if any, it has been violated.

It is not necessary for me to quote the words of the contract; you will find it copied at length in the body of plaintiff's petition, and the original is in evidence before you. You will examine it carefully in the
253 light of the evidence and determine first whether plaintiff on his part complied with the requirements up to the time of the alleged breach by defendant. If he did not, he cannot recover; if he did, you will proceed to inquire whether defendant broke the contract as alleged by plaintiff.

Your attention will now be directed to the alleged breach of the contract by defendant.

1. The contract provides that the railroad company shall build all loading "schutes" for the use of said railroad company connected with the yards. It is alleged that defendant, without fault of plaintiff, failed to perform this agreement; and that plaintiff build the "schutes" at his own cost. If this is so, he is entitled to recover the reasonable cost of their construction.

2. It is further provided that the railroad company shall send all live stock coming to East St. Louis over said railroad to the aforesaid stock yards "except such as is specially ordered otherwise by shippers and owners). A breach of this provision is charged; you will determine from the evidence whether prior to the time named in the petition (Oc-
254 tober 1st, 1873), the defendant failed or refused to send any live stock coming to East St. Louis over said railroad to the plaintiff's stock yards. If you find that defendant did so fail or refuse, then you will enquire whether the shipper or shippers of the stock not so sent to plaintiff's yards had ordered it sent elsewhere.

In case the plaintiff has shown that the defendant failed to send to plaintiff's yard stock coming over its line to East St. Louis, then it is for defendant to show that it did so fail by reason of the fact that the shippers had ordered such stock to *to* sent elsewhere.

3. It is further provided in said contract that said railroad company shall give to said Struble the loading of all live stock which may be transported over the said railroad from East St. Louis, and that the contract shall remain in force for nine years.

If this was the contract of the defendant, it required that the defendant should do all within its power to give the business in question to the plaintiff. I think it should be considered as applying to live stock, the load-
255 ing of which the defendant could control. If a shipper ordered his stock to be loaded elsewhere and the defendant was bound to obey such order, then it would not be liable.

But it is for defendant to show that it was impossible for it to comply in any given case with this provision of the contract; of course the jury will understand that all that I have said about breach of the contract is upon the assumption that you will find that there was a valid contract between the parties. If you find otherwise of course you will have no occasion to go into the question of the alleged breach.

If the jury find that the plaintiff kept his part of the contract prior to the breach and that it was broken by defendant, their next and last inquiry will be as to the damages. If the contract was broken by the defendant without the fault of plaintiff, then the plaintiff is entitled to be put in the same condition pecuniarily as he would have been in if the contract had been kept.

By this I mean to say that if you find for plaintiff you are to find the reasonable value of the contract to him under all the circumstances at the time of the breach.

256 In determining this question you will consider the terms of the contract, the *con*quantity of business likely to be transacted under it, the prospective profits or losses on the same as shown by the evidence, and by profits I mean the compensation agreed upon less the expenses attending the execution of the contract.

The proof is that plaintiff forfeited his leases and lost the stock yards about a month after the alleged breach by defendant. If this inability of plaintiff to meet the terms of his leases was his own fault and not the result of defendant's failure to carry out the contract sued on, then plaintiff can recover only the value of his contract up to the time of the forfeiture of the leases.

Hence, the jury must determine from the evidence whether without defendant's default, the plaintiff became unable to perform his part of the agreement. If satisfied from the evidence that defendant violated the contract and that but for such violation the plaintiff could and would have continued to hold the stock yards, paying the rent thereon and performing his part of the contract with defendant throughout the term fixed
257 therein, then the measure of damages will be the value of the contract sued on considered as a contract for the entire period.

On the other hand if the jury believe from the evidence that the plaintiff lost the stock yards by forfeiture of his leases without the fault of defendant and that such forfeiture was not the result of any breach by defendant of the contract sued on, then the measure of damages will be the value of the contract up to the time of the forfeiture of the leases.

In determening the value of the contract the jury consider carefully all the facts and circumstances developed in evidence, including the probable profits on such stock as would have been shipped from plaintiff's yards ,and the profits thereon.

And in determining the quantity of stock that would probably have been shipped from plaintiff's yards you will include only such as you believe it would have been possible for the defendant to direct to those yards.

From all the evidence you will, if you find for plaintiff, a certain and fixed amount of damages at the time of the breach.

The jury in considering the meaning of the words "All live
258 stock which may be transported over the said railroad from E. St. Louis" found in the last clause of the contract sued on, must determine from all the evidence before them what stock is included. The words evidently apply to such stock as in the ordinary course of the defendant's business should be shipped from that point over their line of railroad. It applies to all such stock whether loaded at plaintiff's yard or at some other yard used for loading stock so shipped. As already suggested it should be applied only to stock which it was possible for defendant to have had loaded by plaintiffs. It does not apply to stock, the owners or shippers of which directed the loading to be done by some person other than the plaintiff, and over the loading of which defendant had no control.

The value of the contract "as the time of the alleged breach," or "the measure of damages," if the jury find for the plaintiff, may be stated distinctly to be, in the language of the U. S. Supreme Court (U. S. vs. Speed, 8 Wall., 77), "the difference between the cost of doing the work and what claimant was to receive for it, making reasonable deduction for the less time
259 engaged, and for release from the care, trouble, risk, and responsibility attending a full execution of the contract."

260 To the following portion of said charge the plaintiff objected:

"I think it should be considered as applying to live stock, the loading of which the defendant could control. If a shipper ordered his

stock to be loaded elsewhere, and the defendant was bound to obey such order, then it would not be liable."

And the said objection being by the court overruled, the plaintiff at the time excepted.

To the following portion of said charge the defendant objected:

"The contract is in the name of the St. Louis, Vandalia, Terre Haute and Indianapolis Railroad, which is not the corporate name of the defendant. It is alleged, however, by the plaintiff that this name was adopted and used by the defendant in the transaction of its business; that it was its custom to use it in the transaction of its business, and that it so used it in making the contract. If you find from the evidence that these allegations are true, then you are instructed that the contract may be valid, notwithstanding the use of this name or designation instead of the corporate name."

And the said objection being by the court overruled, defendant at the time excepted.

261 To that portion of the charge as follows, defendant objected:

"The contract in evidence shows that it was signed by the president of the defendant corporation, and it is admitted that he was the chief executive officer of the corporation. It is also shown that he is a member of the board of directors, but there is no other proof as to the nature or extent of his authority."

The court overruled the objection, to which ruling of the court the defendant at the time excepted.

To the following portion of said charge the defendant objected:

"If you find that the president of the corporation was not authorized to sign the contract sued on you will next inquire whether the defendant has since ratified the same."

The court overruled the objection, to which ruling of the court the defendant at the time excepted.

To the following portion of said charge the defendant objected:

"If the jury find from the evidence in this case that the contract in question was signed by the president of the company, that it became

262 known to the officers and agents of the company in transacting its business at East St. Louis; that they, in conducting such business, negotiated and acted upon said contract, receiving for the company the benefits thereof for a considerable period, and requiring its performance on the part of plaintiff; that defendant thought its agents and officers had possession of the contract and made payments from time to time to plaintiff under it, and that defendant thought such officers and agents had knowledge of the fact, if it was a fact, that plaintiff was expending money in building stock yards, relying upon said contract, and largely, for the purpose of carrying the same out, these facts would amount to a ratification by the defendant of the contract sued on, or work an estoppel against the defendant."

The court overruled the objection, to which ruling of the court the defendant at the time excepted.

To the following portion of said charge the defendant objected:

"The instrument is before you."

The court overruled the objection, to which ruling of the court the defendant at the excepted.

263 To the following portion of said charge the defendant objected:

"The contract provides that the railroad company shall build all loading chutes for the use of said railroad company connected with the yards. It is alleged that defendant, without fault of plaintiff, failed to perform this agreement and that plaintiff built the chutes at his own cost. If this is so he is entitled to recover the reasonable cost of their construction."

The court overruled the objection, to which ruling of the court the defendant at the time excepted.

To the following portion of said charge the defendant objected:

"It is further provided that said railroad company shall send all live stock coming to East St. Louis over said railroad to the aforesaid stock yards (except such as is specially ordered otherwise by shippers and owners). A breach of this provision is charged. You will determine from the evidence whether prior to the time named in the petition (October 1st, 1873) the defendant failed or refused to send any live stock coming to East St. Louis over said railroad to the plaintiff's stock yards. If
264 you find that defendant did so fail or refuse, then you will enquire whether the shipper or shippers of the stock not so sent to plaintiff's yards had ordered it sent elsewhere. In case the plaintiff has shown that the defendant failed to send to plaintiff's yards stock coming over its line to East St. Louis, then it is for defendant to show that it did so fail by reason of the fact that the shippers had ordered such stock sent elsewhere."

The court overruled the objection, to which ruling of the court the defendant at the time excepted.

To the following portion of said charge the plaintiff and defendant objected:

"If a shipper ordered his stock loaded elsewhere (than the yards of plaintiff), and the defendant was bound to obey such order, then it will not be held liable, but it is for defendant to show that it was impossible for it to comply in any given case with this provision of the contract."

The court overruled the objection, to which ruling of the court the plaintiff and defendant at the time excepted.

To the following portion of said charge the defendant objected:

"In determining this question (of damages) you will consider the terms of the contract, the quantity of business likely to be transacted
265 under it, the prospective profits or losses on the same as shown by evidence, and by profits I mean the compensation agreed upon less the expenses attending the execution of the contract."

The court overruled the objection; to the ruling of the court the defendant at the time excepted.

To the following portion of said charge the plaintiff and defendant objected:

"The proof is that the plaintiff forfeited his leases and lost his stock yards about a month after the alleged breach by defendant. If this inability of plaintiff to meet the terms of his lease was his own fault and not the result of defendant's failure to carry out the contract sued on, then plaintiff can only recover the value of his contract up to the time of the forfeiture of the leases."

The court overruled the objection, to which ruling of the court the plaintiff and defendant at the time excepted.

To the following portion of said charge the defendant objected:

"If satisfied from the evidence that defendant violated the contract and that but for such violation the plaintiff could and would have con-
266 tinued to hold the stock yards, paying the rent thereon and performing his part of the contract throughout the term fixed therein, then the measure of damages will be the value of the contract sued on, considered as a contract for the entire period."

The court overruled the objection, and to which ruling of the court the defendant at the time excepted.

To the following portion of said charge the defendant objected:

"On the other hand, if the jury believes from the evidence that the plaintiff lost the stock yards by forfeiture of his leases, without the fault of the defendant, and that such forfeiture was not the result of any breach by defendant of the contract sued on, then the measure of damages will be the value of the contract up to the time of the forfeiture of the leases."

The court overruled the objection, and to which ruling of the court the defendant at the time excepted.

To the following portion of said charge the defendant objected:

"In determining the value of the contract the jury will consider carefully all the facts and circumstances in evidence, including the probable
267 profits on such stock as would have been shipped from plaintiff's yards and the profits thereon."

The court overruled the objection, and to which ruling of the court the defendant at the time excepted.

To the following portion of said charge the plaintiff and defendant objected:

"And in determining the quantity of stock that would probably have been shipped from the plaintiff's yards, you will include only such as you believe it would have been possible for the defendant to direct to those yards."

The court overruled the objection, and to which ruling of the court the plaintiff and defendant at the time objected.

To the following portion of said charge the plaintiff and defendant objected:

"The jury in considering the meaning of the words 'All live stock which may be transported over the said railroad from East St. Louis,' found in the last clause of the contract sued on, must determine from all the evidence before them what stock is included. The words evidently apply to such stock as in the ordinary course of the defendant's business should be shipped from that point over their line of railroad. It
268 applies to all such stock, whether loaded at plaintiff's yards or some other yards used for loading stock so shipped. As already suggested, it should be applied only to stock which it was possible for defendant to have loaded by plaintiff. It does not apply to stock the owner or shipper of which directed the loading to be done by some person other than plaintiff, and over the loading of which defendant had no control."

The court overruled the objection, and to which ruling of the court the plaintiff and defendant at the time excepted.

The jury thereupon rendered a verdict for the plaintiff, and assessed his damages at the sum of ten thousand four hundred and forty dollars;

thereupon the cour' rendered judgment for plaintiff, and against defendant for said sum of ten thousand four hundred and forty dollars, to which action of the court the plaintiff and defendant excepted at the time.

And thereafter, in due time, the plaintiff filed his motion for a new trial, which is in words and figures as follows:

In the circuit court of the United States for the eastern district of Missouri.

ISAAC J. STRUBLE
vs.
TERRE HAUTE & INDIANAPOLIS RAILROAD Company.

269 Now at this day comes the plaintiff and moves the court to set aside the verdict of the jury, and asks for a new trial herein for the following reasons, to wit: The court erred in the construction of that part of the contract as follows:

"Said railroad company further agrees to pay said Struble the sum of two dollars for each and every car of live stock loaded by said Struble, as aforesaid, to be transmitted by said railroad copor. from East St. Louis."

Because the court erred in giving to the jury the following as a part of its charge to the jury: "I think it should be considered as applying to live stock, the loading of which the defendant could control. If a shipper ordered his stock to be loaded elsewhere and the defendant was bound to obey such order then it would not be liable."

Because the said part of the charge of the court is not founded on the evidence or authorized by the contract sued on, or the law governing the same.

LEE & CHANDLER & HILL,
Att'ys for Plaintiff.

270 Which said motion coming on to be heard, was by the court overruled, to which action and ruling of the court plaintiff at the time excepted.

And afterwards, in due time, the defendant filed its motion for a new trial, which is in words and figures as follows:

United States circuit court, eastern district of Missouri, March term, 1880.

ISAAC J. STRUBLE
vs.
THE TERRE HAUTE & INDIANAPOLIS RAILROAD Company.

And now comes the defendant and moves the court to set aside the verdict and to grant a new trial for the following reasons:

1. The verdict of the jury is against the evidence presented at the trial.
2. The verdict of the jury is against the weight of the evidence.
3. The verdict is against the law as declared in the charges and instructions of the court.

4. Because the court erred in its charges and instructions to the jury especially.

5. Because the court erred in charging and instructing the jury as follows:

271 *a.* "The contract is in the name of the St. Louis, Vandalia, and Terre Haute and Indianapolis Railroad Company, which is not the corporate name of the defendant. It is alleged, however, by the plaintiff that this name was adopted and used by the defendant in the transaction of its business; that it was its custom to use it in the transaction of its business, and that it so used it in making this contract. If you find from the evidence that these allegations are true, then you are instructed that the contract may be valid, notwithstanding the use of this name or designation instead of the corporate name."

b. "The contract in evidence shows that it was signed by the president of the defendant corporation, and it is admitted that he was the chief executive officer of the corporation. It is also shown that he is a member of the board of directors, but there is no other proof as to the nature or extent of his authority."

c. "If you find that the president of the corporation was not authorized to sign the contract sued on, you will next enquire whether the defendant has since satisfied the same."

d. "If the jury find from the evidence in this case that the contract in question was signed by the president of the company; that it be-
272 came known to the officers and agents of the company engaged in transacting its business at East St. Louis that they, in conducting such business, negotiated and acted upon said contract, receiving for the company the benefits thereof for a considerable period, and requiring its performance on the part of plaintiff; that defendant, its agents and officers had possession of the contract, and made payments from time to plaintiff under it, and that defendant thought such officers and agents had knowledge of the fact, if it was a fact, that plaintiff was expending money in building stock yards, relying upon said contract, and largely, for the purpose of carrying the same out, these facts would amount to a satisfaction by the defendant of the contract sued on, or work *on* estopped against the defendant."

e. "The instrument sued on is before you."

f. "The contract provides that the railroad company shall build all loading 'schutes' for the use of said R. R. co. connected with the yards. It is alleged that defendant, without fault of plaintiff, failed to perform this agreement, and that plaintiff built the 'schutes' at his own cost. If this is so, he is entitled to recover the reasonable cost of their construction."

g. "It is further provided that the railroad company shall 'send all live stock coming to East St. Louis over said railroad to the aforesaid stock yard (except such as is specially ordered otherwise by ship-
273 pers and owners). A breach of this provision is charged. You will determine from the evidence whether prior to the time named in the petition (October 1st, 1873) the defendant *or* refused to send any live stock coming to East St. Louis over said railroad to the plaintiff's stock yards. If you find that defendant did so fail or refuse, then you will enquire whether the shipper of the stock not so sent to plaintiff's yard had ordered it sent elsewhere. In case the plaintiff has shown that the de-

fendant failed to send to plaintiff's yard stock coming over the line to East St. Louis, then it is for defendant to show that it did so fail by reason of the fact that the shippers had ordered such stock to be sent elsewhere.

h. "If a shipper ordered his stock to be loaded elsewhere (than the yards of plaintiff), and the defendant was bound to obey such order, then it will not be liable. But is for defendant to show that it was impossible for it to comply in any given case with this provision of the contract."

i. "If the jury find that the plaintiff kept his part of the contract prior to the breach, and that it was broken by defendant, their next and last inquiry will be as to the damages."

274 *j.* "In determining this question (of damages) you will consider the terms of the contract, the quality of business likely to be transacted under it, the prospective profit or losses on the same as shown by the evidence; and by profits I mean the compensation agreed upon less the expenses attending the execution of the contract."

k. "The proof is that plaintiff forfeited his leases, and lost the stock yards about a month after the alleged breach by defendant. If this inability of plaintiff to meet the terms of his leases was his own fault and not the result of defendant's failure to carry out the contract sued on, then plaintiff can recover only the value of his contract up to the time of the forfeiture of the leases."

l. "If satisfied from the evidence that defendant *stated* the contract, and that but for such violation the plaintiff could and would have continued to hold the stock yards, paying the rent thereon and performing his part of the contract throughout the term fixed therein, then the measure of damages will be the value of the contract sued on considered as a contract for the entire period."

m. "On the other hand, if the jury believes from the evidence that the plaintiff lost the stock yards by forfeiture of his leases, without the
275 fault of defendant, and that such forfeiture was not the result of any breach by defendant of the contract sued on, then the measure of damages will be the value of the contract up to the time of the forfeiture of the leases."

n. "In determining the value of the contract, the jury will consider carefully all the facts and circumstances developed in evidence, including the probable profits in such stock as would have been shipped from plaintiff's yards and the profits thereon."

o. "And in determining the quality of stock that would probably have been shipped from the plaintiff's yards, you will include only such as you believe it would have been possible for the defendant to direct to those yards."

p. "The jury in considering the meaning of the words: 'All live stock which may be transported over the said railroad from East St. Louis,' found in the last clause of the contract sued on, must determine from all the evidence before them what stock is included. The words evidently apply to such stock as in the ordinary course of the defendant's business should be shipped from that point over their line of railroad. It
276 applies to all such stock, whether loaded at plaintiff's yard or some other yard used for loading stock so shipped; as already suggested, it should be applied only to stock which it was possible for defendant to have had loaded by plaintiff. It does not apply to stock the owner or

shipper of which directed the loading to be done by some person other than plaintiff and over the loading of which defendant had no controle."

6th. Because the court permitted improper evidence to be given to the jury against defendant's objections.

7th. Because the court rejected proper evidence offered to be given to the jury by defendant.

8. Because the verdict is against the law and the evidence.

9. Because the verdict should be for the defendant and not for the plaintiff, and for other good and sufficient reasons.

J. B. BOWMAN & R. F. WINGATE,
Att'ys for Defendant.

277 Which said motion coming on to be heard, was by the court overruled; to which action and ruling of the court defendant at the time excepted.

And afterwards, in due time, defendant filed its motion in arrest of judgment, which is in words and figures as follows:

In the United States circuit court, eastern district of Missouri, March term, A. D. 1880.

ISAAC J. STRUBLE, PLAINTIFF,
vs.
THE TERRE HAUTE & INDIANAPOLIS RAILROAD Company, defendant. } 1179.

Motion in arrest.

And now comes the said defendant and moves the court to arrest the judgment in this cause for the reasons:

1st. That upon the record said judgment is erroneous.

2. That the petition does not state facts sufficient to constitute a cause of action against the defendant.

3. That the verdict of the jury is not responsive to the issues made by the pleadings.

278 4. Because the State court (circuit court of St. Louis County, Missouri) wherein said cause originated had no jurisdiction over the person of the defendant, as appears from the record of said cause.

5. Because this court erred in overruling defendant's demurrer to plaintiff's petition.

6. Because both the record and the evidence in this case show that this court has no jurisdiction over the subject-matter, and no jurisdiction over the parties to this suit, and no authority to hear and determine this cause.

JOB B. BOWMAN AND
R. F. WINGATE,
Att'ys for Defendant.

279 Which said motion coming on to be heard was by the court overruled; to which action and ruling of the court defendant at the time excepted.

And that the above matters, things, motions, rulings, and exceptions may be made a part of the record, the said parties, plaintiff and defendant, hereby tender this their joint bill of exceptions, and pray that the same may be signed and sealed as such, which is accordingly done.

SAMUEL TREAT, [SEAL.]
Judge.

280 And afterwards, to wit, on the 10th day of April, A. D. 1880, the following further proceedings were had, and appear of record in said cause, to wit:

ISAAC J. STRUBLE, PLAINTIFF,
vs.
TERRE HAUTE AND INDIANAPOLIS RAILROAD Compa'y, defendant.

Now comes the defendant, by its attorn'y, and presents to the court a writ of errors to remove this cause to the Supreme Court of the United States, and a citation citing and admonishing the said plaintiff to be and appear at a Supreme Court of the United States at the next term thereof, on the second Monday of October next; which said writ of errors is allowed and said citation signed by the judge; and the said defendant also presents to the court its bond in the penal sum of twenty-two thousand dollars, which bond is approved; and, on motion of said defendant, it is ordered that a supersed'as be awarded staying further proceedings on the judgment herein.

Which said bond is in words and figures as follows:

281 Know all men by these presents that we, Terre Haute & Indianapolis Railroad Company, William R. McKeen, M. M. Buck & Co., and Sylvester H. Laflin, are held and firmly bound unto Isaac J. Struble in the full and just sum of twenty-two thousand dollars, to be paid to the said Isaac J. Struble, his heirs, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this tenth day of April, in the year of our Lord one thousand eight hundred and eighty.

Whereas lately at the March term, A. D. 1880, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between Isaac J. Struble, plaintiff, and the Terre Haute & Indianapolis Railroad Company, defendant, judgment was rendered against the said defendant; and the said defendant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Isaac J. Struble, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such that if the said

The Terre Haute & Indianapolis Railroad Company shall prosecute said cause to effect and answer all damages and costs if it fail to make good its plea, then the above obligation shall be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

{ CORPORATE SEAL R. R. CO. }

TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY,
By W. R. McKEEN, *President.* [SEAL.]
WILLIAM R. McKEEN. [SEAL.]
M. M. BUCK & CO. [SEAL.]
SYLVESTER H. LAFLIN. [SEAL.]

Attest:
GEO. E. FARRINGTON,
Secretary.

Approved by—

SAMUEL TREAT, *Judge.*

No. . United States circuit court, eastern district of Missouri.
vs. . Bond. $, principal.
, sureties. Filed day of , 187 .
clerk.

282 And afterwards, to wit, on the 13th day of May, A. D. 1880, the following further proceedings were had, and appear of record in said cause, to wit:

ISAAC J. STRUBLE, PLAINTIFF,
vs.
TERRE HAUTE AND INDIANAPOLIS RAILROAD COMPANY, defendant.

Now come the plaintiff and defendant by their respective attorneys and present to the court their joint bill of exceptions, which is allowed and signed and ordered to be filed as a part of the record herein; and said plaintiff by attorney also presents to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation, citing and admonishing the said defendant to be and appear at a Supreme Court of the United States at the next term thereof, on the second Monday of October next, which said writ of error is allowed and said citation signed by the judge.

283 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify that the writing hereto attached to be a true transcript of the pleadings and proceedings in case No. 1169 of Isaac J. Struble, plaintiff, against The Terre Haute and Indianapolis Railroad Company, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of

said court, at office in the city of St. Louis, in said district, this 20th day of September, in the year of our Lord eighteen hundred and eighty.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY, *Deputy.*

(Indorsed:) No. . United States circuit court, eastern district of Missouri. against . Duly certified copy of the in the above-entitled cause.

284 Supreme Court of the United States at the October term, 1880.

ISAAC J. STRUBLE, DEFENDANT IN ERROR,
vs.
TERRE HAUTE AND INDIANAPOLIS RAILROAD Company, plaintiff in error.

On appeal from U. S. circuit court, eastern district of Missouri.

And now at the present term, before the justices of the Supreme Court of the United States, come the Terre Haute and Indianapolis Railroad Company, plaintiff in error, by John G. Williams, of Terre Haute, Indiana, and John B. Brown, of St. Clair County, Illinois, its attorneys, and says that there is manifest error in the record and proceedings aforesaid in this, to wit:

That the State court, circuit court of the city of St. Louis, Missouri, erroniously overruled the motion of the plaintiff in error to quash the writ and dismiss said suit, for the want of jurisdiction over the person of the plaintiff in error.

That the circuit court of the United States for the eastern district of Missouri, to which said cause had been removed, erroniously overruled the demurrer of the plaintiff in error to the petition of the defendant in error.

That the said circuit court of the United States erroniously excluded evidence offered by the plaintiff in error.

That it erroniously admitted illegal evidence offered by the defendant in error.

285 That it erred in refusing to exclude the alleged contract, dated on September 1, 1871, on motion of the plaintiff in error.

That it erroniously charged and instructed the jury.

That it erred in refusing to grant a new trial as prayed by the plaintiff in error.

That it erred in refusing to arrest the judgment on motion of the plaintiff in error.

That it erred in rendering judgment for the defendant in error.

That it erred in not rendering judgment for the plaintiff in error.

And the said Terre Haute and Indianapolis Railroad Company, plaintiff in error, prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that it may be restored to all things it hath lost by reason of the said judgment.

JOHN G. WILLIAMS AND
JOB B. BOWMAN,
Attorneys for Plaintiff in Error.

(Indorsed:) In the Supreme Court of the United States. Oct. term, 1880. Isaac J. Struble, def't in error, vs. Terre Haute & Indianapolis Railroad Company, pl'ff in error. Assignment of errors.

Supreme Court U. S., 1880, October term. No. 993. The Terre Haute & Indianapolis R. R. Co., pl'ff in error, vs. Isaac J. Struble. Assignment of errors. Filed 15' Oct'r, 1880.

(Indorsement on cover:) No. 123. The Terre Haute & Indianapolis Railroad Company, plaintiff in error, vs. Isaac J. Struble. E. Missouri C. C. U. S. Filed 15th October, 1880.

109-381

OFFICE SUPREME COURT U. S.
FILED
NOV 5 1883
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

No. 123.

OCTOBER TERM, A. D. 1883.

TERRE HAUTE & INDIANAPOLIS RAIL-ROAD COMPANY,
Plaintiff in Error.

vs.

ISAAC J. STRUBLE, *Defendant in Error.*

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR.

HOOKE & LANGEN, PRINTERS.

(Indorsed:) In the Supreme Court of the United States. Oct. term, 1880. Isaac J. Struble, def't in error, vs. Terre Haute & Indianapolis Railroad Company, pl'ff in error. Assignment of errors.

Supreme Court U. S., 1880, October term. No. 998. The Terre Haute & Indianapolis R. R. Co., pl'ff in error, vs. Isaac J. Struble. Assignment of errors. Filed 15th Oct'r, 1880.

(Indorsement on cover:) No. 123. The Terre Haute & Indianapolis Railroad Company, plaintiff in error, vs. Isaac J. Struble. E. Missouri C. C. U. S. Filed 15th October, 1880.

109-381

SUPREME COURT U.S.
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SUPREME COURT OF THE UNITED STATES.

No. 123.

OCTOBER TERM, A. D. 1883.

TERRE HAUTE & INDIANAPOLIS RAIL-ROAD COMPANY,
Plaintiff in Error.

vs.

ISAAC J. STRUBLE, *Defendant in Error.*

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR.

MOORE & LANGEN, PRINTERS.

In the Supreme Court of the United States.

OCTOBER TERM, A. D., 1883.

NO. 123.

THE TERRE HAUTE AND INDIANAPOLIS RAILROAD COMPANY, *Plaintiff in Error*,

vs.

ISAAC J. STRUBLE, *Defendant in Error*.

STATEMENT OF CASE.

On the 13th day of August, 1877, Isaac J. Struble, the defendant in error, commenced this action in the Circuit Court of the City of St. Louis to recover damages for an alleged breach of a written contract claimed to have been made with him by the plaintiff in error under the name and style of the "St. Louis, Vandalia, Terre Haute and Indianapolis Railroad Company."

On January 22, 1878, the plaintiff in error filed its petition and bond for the removal of this cause to the Circuit Court of the United States for the Eastern District of Missouri, and on February 18, 1878, the removal was perfected by filing in this latter court a transcript of the record from the State Court.

On December 17, 1878, the plaintiff in error filed its answer and the cause was finally put at issue April 28, 1879, by the filing of a reply to this answer.

A trial by jury was commenced on the 30th of March, 1880, and on April 5, 1880, the jury returned a verdict for defendant in error in the sum of $10,440.00, and on the same day judgment was rendered on this verdict.

On the 13th of May, 1880, a joint bill of exceptions was presented to the Court and allowed and signed, and also on the same day a writ of error was allowed removing the cause to this Court.

The contract upon which the action is based was filed as an exhibit with the declaration, and is in the words and figures following:

"This contract & agreement made & entered into on this the first day of September, A. D., one thousand eight hundred and seventy-one, by & between Isaac J. Struble of the first part, and the St. Louis, Vandalia, Terre Haute and Indianapolis Railroad Company of the second part, witnesseth.

That the said Struble agrees & binds himself for & in [and] consideration of the agreements and stipulations hereinafter mentioned to be performed by the said railroad company aforesaid, to build and keep in good order on his grounds, situated in East St. Louis, County of St. Clair, State of Illinois, being the lands of the Wiggins Ferry Company leased to Struble, Fredericks & Co. by lease, dated October 17, 1870; also lots leased of Jesse Hake by said Struble, Fredericks & Co., all necessary stock-yards & feeding pens suitable for the reception, feeding, handling, loading and unloading of all live-stock which may be shipped or transported over said railroad to or from East St. Louis aforesaid, to receive and unload all live-stock transported over said railroad to East St. Louis, to collect all freights & charges on

same, & pay over to said railroad company or to its authorized agents all amounts of monies so collected, to order all cars necessary for the transportation of live-stock from East St. Louis from the proper agent of said railroad company; to bed (said) at a cost to the shippers of said stock of not more than one dollar per car, to be collected by said Struble of said shipper, and to attend to all other necessary matters pertaining to the safe and prompt loading of all such live-stock for transportation as aforesaid over the railroad. The said St. Louis, Vandalia, Terre Haute & Indianapolis Railroad Company, in consideration of the performances of the aforesaid stipulations and agreements on the part of the said Isaac J. Struble, agrees to build all necessary loading schutes for the use of said railroad co. connected with the yards aforesaid, to send all live-stock coming to East St. Louis over said railroad to the aforesaid stock-yards (except such as is specially ordered otherwise by shippers or owners), to pay said Struble fifty cents per car load for all stock received by him over said (road) and unloaded in said yards. Said railroad company further agrees to pay said Struble the sum of two dollars for each and every car of live-stock loaded by said Struble as aforesaid, to be transported by said railroad co. from East St. Louis; said railroad company further agrees to give to the said Struble the loading of (all) live-stock which may be transported over its said railroad from E. St. Louis.

This contract and agreement to be and remain in full force & effect for the term of nine years from the date herein written.

In testimony whereof the said parties hereto agreeing have set their hands & seals.

I. J. STRUBLE.
W. R. McKEEN,
President."

It is averred in the declaration that this contract was, in fact, made in October, 1870, and was reduced to writing at that time, but not signed, and by its terms then was to be in force for ten years, but that the plaintiff in error failed to execute it until September 1, 1871, and on account of this delay the written contract when executed was changed so as to read for nine years instead of ten.

The declaration further states that for the sole purpose of complying with this contract the defendant in error built, completed and put into operation the stock-yards described in the contract and expended in so doing the sum of $25,000.00.

The breaches alleged are:

1. That the plaintiff in error failed and refused to build necessary loading chutes for its use connected with said stock-yards, and that Struble, in order to comply with said contract, built and constructed said loading chutes at a cost of $1,000.00.

2. That the plaintiff in error did not send all live-stock coming to East St. Louis over its railroad to plaintiffs' stock-yard, except such as was specially ordered otherwise.

3. That plaintiff in error failed and refused to give plaintiff the loading of all or any live-stock and to pay two dollars per car therefor, transported over its railroad from East St. Louis, and after the 1st day of October, 1873, excluded the defendant in error from such loading without any fault on his part.

It is then claimed that by reason of these several breaches Struble has been and will be deprived of large gains and profits which would have accrued to him under the contract had he been permitted to carry it out, and that by reason of the plaintiff in error preventing him from

carrying it out and by failing to comply therewith his stock-yards became valueless and were lost to him, and after the 1st day of November, 1873, became worthless.

The answer of plaintiff in error admits that it is a corporation created by the laws of Indiana; that at the time of the commencement of this suit and for a long time prior thereto it operated a line of railway extending from East St. Louis, in Illinois, to the City of Indianapolis, in Indiana.

It denies, however, the execution of a contract or the making of the parol agreement as alleged in the declaration.

It denies that Struble kept and performed the conditions of the contract filed as an exhibit with his declaration, and says that the lessors of the ground upon which Struble's stock-yards were located declared the leases forfeited for non-payment of rent and on the 31st day of October, 1873, took possession of these stock-yards and carried on the business upon said premises for their sole use and exclusive benefit.

All the allegations of the declarations concerning the breaches of the contract on the part of the plaintiff in error are generally and specifically denied in the answer, as well as all the allegations of damage and loss of profits.

The reply to this answer simply denies each and every allegation of new matter contained in the answer.

The undisputed facts developed at the trial were briefly these:

In the fall of 1870, Struble commenced the construction of some stock-yards in the City of East St. Louis upon lands leased in part of the Wiggins Ferry Company and in part of Jesse Hake.

These stock-yards were completed sometime in December, 1870, and at that time were the only stock-yards in East St. Louis. They were situate on the bank of the Mississippi River, a short distance north of the depot and freight yard of the plaintiff in error. There was no track connecting these yards with the railroad of plaintiff in error, commonly spoken of as the Vandalia Road, except a track belonging to the Ohio and Mississippi Railway Company, which crossed the railroad of plaintiff in error some distance from these stock-yards.

From the time the Struble yards were opened for business in December 1870, until September or October, 1873, all live-stock coming to East St. Louis over the line of the Vandalia Railroad was unloaded at the Struble yards and all live-stock shipped from East St. Louis over this railroad was loaded by Struble.

Early in the fall of 1873 the National Stock-Yards were completed and opened for business. These stock-yards were situated just outside of the city limits of East St. Louis and near the line of the Vandalia Railroad. The East St. Louis and Carondelet Railway, or Connecting Road as it is called by some of the witnesses, crossed the line of the Vandalia Road in the City of East St. Louis and had a double track out to the new stock-yards.

In February, 1873, whilst these new yards were in process of construction, Struble left East St. Louis and went to Jersey City, where he resided until the time of the trial of this case in the Court below. He left his stock-yards in charge of one F. C. Cox, to whom he says he gave an interest for attending to the business. He had no personal knowledge of what transpired at his yards from the time he left, and was not in East St. Louis between February, 1873, and the spring of 1874.

When the National yards were opened for business stock came over the line of the Vandalia Railroad consigned to those yards and was delivered there. Stock in the National yards, to be shipped East, was tendered to the Vandalia Road for transportation and accepted. This stock was loaded into cars in the National yards.

In August or September, 1873, F. C. Cox, claiming to act for Struble, went to the National yards and claimed the right to load all stock in those yards which was to be shipped over the Vandalia Road. The President of the stock-yards told him he could not do this, as that was the business of the National yards, and they could not afford to let others do it.

In October, 1873, Struble owed several months' rent for the lease of the grounds upon which he had constructed his stock-yards and both lessors notified him that the tenancies were terminated for non-payment of rent.

October 31, 1873, F. C. Cox formally surrendered possession of the Struble stock-yards to the Wiggins Ferry Company and Jesse Hake, but remained in charge of them under employment from the Ferry Company and Hake and for several months thereafter a general stock-yard business was carried on there.

It is not claimed that Struble was refused the loading of any stock to be transported East over the Vandalia Road from East St. Louis, unless the action of the officers of the National Stock-Yards be construed as such a refusal, nor does it appear that any stock coming into East St. Louis over the Vandalia Road was delivered at the National Stock-Yards, except such stock as was consigned by the shippers to those yards.

The only evidence offered tending to show what damages Struble had sustained by the alleged breach of the

contract sued upon is contained in the evidence of N. S. McKeen, Isaac H. Knox, William B. Menzie and Isaac J. Struble.

All of these witnesses were introduced in behalf of the plaintiff below.

N. S. McKeen testified that during the year 1878 the Vandalia Road took 4,371 cars out of the National Stock-Yards and in the year 1879 took 4,801 cars. Record page 24.

Isaac H. Knox testified to the number of cars which the Vandalia Road took from the National Stock-Yards between August 1, 1874, and April 1, 1880. Record page 27.

William B. Menzie testified that from September 1, 1872, to September 1, 1873, the Vandalia Road took from Struble's stock-yards 2,866 cars and from the National Stock-Yards 393 cars. Record page 62.

This same witness also stated that for the shipment of each car of cattle under a contract giving two dollars a car for loading and one dollar for bedding, there would be a profit of $2.50 per car. Record page 58.

Isaac J. Struble testified as follows: "For the stock that came into the yards that I got the feeding of, and fed, with what the railroad company was to pay me I counted as a net profit $2.50 per car. * * * I am speaking of the stock going out." Record page 34.

This same witness also stated the stock-yards cost him between twenty and twenty-five thousand dollars, and that at the request of the plaintiff in error he constructed loading chutes at a cost of between nine hundred and a thousand dollars. Record pages 33 and 41.

The plaintiff in error insists that under the facts as above

set forth there was no breach of contract on its part that would authorize Struble to abandon the contract and bring this action, and that there was no competent evidence given to the jury upon which the law would authorize the assessment of damages even if there had been a breach of the contract sued on.

Numerous errors are assigned in this Court, but all the questions relied upon here and intended to be urged are embraced within the following assignments:

1. That the Court below erroneously admitted illegal evidence offered by the defendant in error.

2. That the Court below erred in refusing to grant a new trial as prayed by the plaintiff in error.

3. That the Court below erroneously charged and instructed the jury.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

I.

"*The Court below erroneously admitted illegal evidence offered by the defendant in error.*"

The error referred to under this assignment is the evidence given by N. S. McKeen and Isaac H. Knox as to the number of cars taken by the plaintiff in error from the National Stock-Yards between August 1, 1874, and April 1, 1880.

The record shows that N. S. McKeen, a witness for the plaintiff below, was asked the following question: "State the number of cars of live-stock within the last two years that you have shipped?

This question was objected to as incompetent, but the objection was overruled and plaintiff in error at the time excepted. The witness answered:

"4,371 cars for the year 1878 from the National Stock-Yards; for the year 1879, 4,801." Record page 65.

Isaac H. Knox, a witness for the plaintiff, was asked, "Have you any record or data by which you are enabled to state the number of cars of live-stock shipped from the National Stock-Yards from November, 1874, to the present time over the Vandalia Line?"

This question was objected to by counsel for plaintiff in error as incompetent and immaterial, but the objection was overruled by the Court and an exception taken at the time.

The witness answered: "I have from August, 1874. The shipment from the 1st of August, 1874, to the balance of the year was 1,456 cars; in 1875, 2,507 cars; in 1876, 2,992; in 1877, 3,017; in 1878, 4,362 cars; in 1879, 4,796 cars, and so far in 1880 there has been, I think, 1,200 or 1,300 cars." Record page 27.

It is apparent that the only object in the introduction of this testimony was to furnish the jury a basis upon which to estimate damages. It is respectfully submitted that for this purpose it was wholly improper and incompetent.

Conceding for the sake of argument that the evidence established a breach of the contract, the next question is what the measure of damages should be.

The uniform principle adopted by this Court in cases of this character is, that the measure of damage is the difference between the cost of doing the work and what the claimants were to receive for it, making reasonable

deduction for the less time engaged and for release from the care, trouble, risk and responsibility attending a full execution of the contract.

Philadelphia, Wilmington and Baltimore Railroad Company vs. Howard, 13th Howard 307.

United States vs. Speed, 8th Wallace 77.

In applying this rule it would, of course, become necessary to ascertain what number of cars would have been loaded and shipped from East St. Louis under the contract had it not been broken.

It was manifestly improper, however, to permit evidence to go to the jury showing the number of cars that had been shipped from the National yards.

These yards were outside of the limits of the City of East St. Louis, and, therefore, not embraced within the contract sued on, and there is not a fact in the case which would authorize the presumption that as many cars would have been shipped from the Struble yards as were shipped from the National yards.

II.

"*The Court below erred in overruling the motion for a new trial.*"

This motion should have been sustained because it is plain that the verdict was against the law and the evidence.

The covenants in the contract sued on were mutual.

Struble agreed to build and keep in good order for the term of nine years all necessary stock-yards and feeding pens suitable for the reception, feeding, handling, load-

ing and unloading of live-stock which might be shipped or transported over said railroad to or from East St. Louis; to receive and unload all live-stock transported over said railroad to East St. Louis; to collect freight and charges on the same and to pay over to the railroad company all monies so collected; to order all cars necessary for the transportation of live-stock from East St. Louis from the proper agents of the company; to bed these cars at a cost to the shippers of the stock of not more than one dollar per car, and to attend to all other necessary matters pertaining to the safe and prompt loading of all such live-stock for transportation as aforesaid over the railroad of plaintiff in error.

The railroad company on its part agreed to build the loading chutes necessary for its use in connection with the Struble stock-yards; to send all live-stock coming to East St. Louis over its railroad to these stock-yards, except such as was specially ordered otherwise by shippers or owners; to pay Struble fifty cents per car for all stock received by him over said railroad and unloaded in his yards; to give him the loading of all live stock transported over its railroad from East St. Louis, and to pay him two dollars for each car of live-stock loaded by him at his stock-yards which was to be transported by the railroad company from East St. Louis.

It is plain that to entitle Struble to recover anything in this action it was necessary for him to show that the railroad company had been guilty of some substantial breach of this contract.

The record, however, fails to disclose any evidence whatever tending to show any breach of the contract on the part of the railroad company.

Upon this point there is no conflict of evidence which

it would be the peculiar province of the jury to reconcile. There is a total failure of proof.

Of course it is admitted that stock was transported over the line of the Vandalia Railroad to the National Stock-Yards and that stock was shipped over the line of this railroad from the National Stock-Yards, but there is nothing in the agreement that prevents the railroad company from doing business at the National Stock-Yards, nor is there anything in the contract binding the company to pay Struble for the loading or unloading of any stock, except stock shipped to or from the stock-yards specified in the agreement.

The National Stock-Yards were not within the limits of East St. Louis and were nearly two miles from the freight depot of the Vandalia Road and from the Struble stock-yards.

Struble testifies that the railroad company failed to build loading chutes and that at the request of the company he constructed chutes for it, costing between nine hundred and one thousand dollars, and that this sum has never been paid him.

These chutes were built in the spring or summer of 1871 before the contract sued on was signed (record page 60) and Struble continued to do business under the contract for more than two years after the chutes were built.

He cannot, therefore, claim that a failure to pay for these chutes was such a breach of the contract as would entitle him to abandon the contract and sue for damages.

Outside of the failure to pay for these chutes and of the fact that the company refused to pay Struble for stock loaded at the National yards and shipped over the Van-

dalia Railroad, there can be no pretense that there was any breach of the contract on the part of the railroad company.

It is conceded that the railroad company never refused to let Struble load stock at the Struble yards. Record page 59.

It is not claimed that any damages resulted from the failure to ship stock to the Struble yards.

Struble says himself that not many cars were shipped to his yards over the Vandalia Railroad; that such stock belonged to individual owners, and they directed the shipment. Record page 44.

The only point then that admits of discussion is whether the railroad company was guilty of a breach of the contract sued on in refusing to pay Struble for stock loaded at the National Stock-Yards.

I respectfully insist that under the contract Struble was not entitled to load the stock at the National Stock-Yards, and was, therefore, not entitled to receive pay for cars loaded there and that the refusal of the company to pay him was not a breach of the contract.

If this position be correct, the verdict of the jury should undoubtedly have been for the plaintiff in error.

In another view, however, the verdict was clearly contrary to the law and the evidence.

Even if there had been such a breach of the contract on the part of the railroad company as would entitle Struble to abandon the contract and sue for damages he would only be entitled to recover, under the most favorable circumstances, the difference between the price fixed by the contract for the loading and unloading of stock and what it would cost him to do the work required of him by the contract.

In order to assess his damages upon this basis, it was of course, necessary for the jury to know how much it would cost to load a car of stock or to unload a car and the number of cars that would have been loaded or unloaded at his stock-yards during the term of the contract. There is no evidence whatever from which the cost of either loading or unloading a car of stock can be estimated.

It is true that Struble and Menzie both testified that there was a net profit of two dollars and a half per car on each car load of stock fed in the yard and shipped out under the contract.

It is apparent, however, that this sum of $2.50 does not indicate the difference between the cost of loading a car of stock and the contract price; for the price fixed by the contract for loading was $2.00 per car, and it is clear that there could not be a profit of $2.50 per car when the price to be paid was only $2.00 per car.

It may be claimed, however, that the company would be liable for the profit Struble would have realized from feeding the stock in his yards.

This position, however, is wholly untenable and at variance with the rule laid down in the Speed and Howard cases already cited.

It will not be pretended that the railroad company controlled the stock that came into the Struble yards. This stock was brought in by Western owners and changed hands at the yards to Eastern buyers, and was then shipped out by the new owners.

There is no evidence whatever as to how much it costs to unload a car and no facts are stated by any witness which would enable any one to compute what the cost would be.

The plaintiff below, therefore, wholly failed to show to the jury any facts from which they would be authorized to compute his damages, even if the number of cars had been definitely ascertained.

This last item, however, is even more uncertain than anything else.

It is true, the plaintiff was permitted to show how many cars of stock were shipped from the Struble yards the year before the National Stock-Yards were opened, and also to show the number of cars shipped from the National Stock-Yards over the Vandalia Railroad, between August, 1874, and April, 1880. I respectfully submit, however, that the law will not authorize the jury to guess at the number of cars that would probably have been shipped from Struble's yards had he continued to do business there.

The uncontradicted testimony of several witnesses shows conclusively that as soon as the National Stock-Yards were completed and open for business all stock went there; in fact, Struble admits that he discharged his employes September 1st, 1873, (Record page 44) whereas the National Stock-Yards were not opened for business until November 21st or 22d, 1873. Record page 89.

I have already discussed the impropriety of admitting testimony as to the number of cars shipped over the Vandalia Railroad, from the National Stock-Yards, but if this testimony should be deemed proper, by what process would the jury be authorized to estimate the number of cars that would have been shipped from Struble's yard during the term the contract was to run. Any attempt to make a computation from this basis would carry the jury into the range of imaginary probabilities and

permit them to make speculative guesses, such as the law abhors and forbids.

If, on the other hand, this Court should be of the opinion that the evidence showing shipments from the National Stock-Yards was improperly admitted, then the only evidence remaining from which the jury could begin a calculation of the probable number of cars that would be loaded at the Struble yards between 1873 and 1880 is that of William B. Menzie, stating the number of cars shipped from Struble's yard for the year ending September 1st, 1873. If a computation be attempted upon this basis difficulties of the same character will be encountered.

It could not be legitimately presumed that the Struble yards would do as much business after the opening of the National yards as they did before. The record shows that the National Stock-Yards were very much better in every way than the Struble yards, in respect to capacity and convenience, and that at least ten men were employed in traveling through the West and North, soliciting consignments of stock to the National Stock-Yards.

This competition, it is plain, would necessarily reduce the business done at the Struble yards—but who can say what the difference would be? Any finding upon the point made by the jury would be a mere guess, without substantial facts to support it.

I respectfully submit, then, upon this branch of the case that inasmuch as the plaintiff failed to show any one of the only facts from which the jury would be authorized to compute his damages, the verdict of the jury assessing his damages at $10,440.00 was clearly contrary to the law and unauthorized by the evidence.

It may, perhaps, be claimed that the evidence as to the cost of the stock yards will sustain the verdict. There is nothing in the case, however, to support such a claim.

Struble had no right to abandon the buildings and improvements he had erected on the leased premises and charge the Railroad Company with what they cost.

"The law required him to take that course by which he could secure himself with the least damage to the defendant in error."

Warren vs. Stoddard, 105 U. S. 224.

It is admitted that several railroad companies, besides the plaintiff in error, did business at the stable yards.

Struble swears that his stock yards were general.

Record page 44.

In December, 1873, the net profits of operating the yards amounted be $418.50.

Record page 82.

By paying the rent, Struble could easily have secured himself against the loss of his improvements, and having failed to do this he cannot charge plaintiff in error with that loss.

III.

The Court below erroneously charged and instructed the jury.

Among the instructions given is found the following:

"And in determining the quantity of stock that would probably have been shipped from the plaintiff's yards you will include only such as you believe it would have been possible for the defendant to direct to those yards."

This instruction directs a mode of arriving at the number of cars that would probably have been shipped from the Struble yards, which is entirely unwarranted by the issues or the evidence.

It was not claimed that under the contract the railroad company was to direct any live stock to the Struble yards except that which came over its own line to East St. Louis and was not consigned elsewhere.

It is clear that the number of cars shipped into St. Louis could not possibly afford any criterion of the number that would have been shipped out of East St. Louis over the railroad of the plaintiff in error.

There was no evidence whatever as to the number of cars carried into East St. Louis over the Vandalia Railroad, and consequently the jury had nothing before them on that point.

The instruction, however, does not refer to stock going into East St. Louis over the Vandalia road alone.

It suggests the idea that it was the duty of the railroad campany to direct all stock to the Struble yards, no matter where it came from.

It was wholly inapplicable to the case and well calculated to confuse and mislead the jury.

Another instruction given by the Court was as follows:

"The jury, in considering the meaning of the words 'All live stock in hide may be transported over the said railroad from East St. Louis' found in the last clause of the contract sued on must determine from all the evidence before them what stock is included. The words evidently apply to such stock as in the ordinary course of the defendant's business should be shipped from that point over their line of railroad. It applies to all such

stock, whether loaded at plaintiff's yards or some other yards used for loading stock so shipped. As already suggested, it should be applied only to stock which it was possible for defendant to have loaded by plaintiff. It does not apply to stock, the owner or shipper of which directed the loading to be done by some person other than the plaintiff and over the loading of which defendant had no control."

The fair interpretation of the contract sued on is that Struble was to have the loading of *all live stock in East St. Louis*, which was to be transported *from East St. Louis* over the line of the Vandalia Railroad.

He was not to have the loading of live stock at any point other than East St. Louis.

He agreed to keep stock-yards *in East St. Louis* for the purpose of loading and unloading stock shipped over the Vandalia Railroad to and from *East St. Louis*.

He did not agree to load stock or maintain stock-yards at any point other than East St. Louis.

The Railroad Company agreed to pay him only for stock received by him over its line and unloaded in *the yards specified in the agreement* and for stock loaded by him "as aforesaid" to be transported from East St. Louis over the Vandalia Railroad.

The words "as aforesaid" clearly mean that the company was only to pay for stock loaded by Struble at the stock-yards in East St. Louis for transportation over the Vandalia Railroad from East St. Louis.

The conclusion is irresistible that the provision in the contract giving Struble the loading of all live stock which might be transported over the Vandalia Railroad "from East St. Louis" was understood by both parties to the agreement to refer only to live stock in East St. Louis.

It was in East St. Louis alone that Struble was to keep stock-yards suitable for unloading and loading stock transported over the Vandalia Railroad to and from East St. Louis.

It was for loading and unloading stock at these stock-yards alone that the company agreed to pay Struble.

The contract fixes no price for loading or unloading anywhere else.

How then can it be said that the agreement bound the railroad company to give Struble the loading of any stock at any other place?

Yet in the instruction now under consideration the Court below told the jury that the contract required the company to give to Struble the loading of all stock shipped over its railroad from East St. Louis whether loaded at the Struble yards in East St. Louis or at some other yard at some other place.

It is true the Court attempts to qualify this broad statement by afterwards telling the jury that the contract did not embrace stock which the owners or shippers directed to be loaded by some person other than Struble, and over the loading of which the railroad company had no control.

I respectfully submit that such a construction of the contract in suit cannot be sustained.

The contract either did or did not embrace within its terms the stock loaded at the National Yards for shipment over the Vandalia Railroad.

If it did embrace such stock what authority is there for saying that if the railroad company could not control the loading of this stock the jury should find that the contract did not bind the company to give the loading of it to Struble?

If, on the other hand, stock loaded at the National yards was not embraced within the terms of the contract, then the jury should have been instructed to find for the defendant, because there was no breach of the contract unless the refusal of the railroad company to pay Struble for stock loaded at the National yards constituted one.

It is true that at the time Struble abandoned his stock-yards in East St. Louis the stock loaded at the National yards for shipment over the Vandalia Railroad came to East St. Louis over the Conlogue Road before it went East over the Vandalia.

It would seem absurd, however, to say that this fact alone made the company liable to Struble if it did not pay Struble for the loading of the stock at the National yards.

These National yards were outside of East St. Louis. The stock shipped from them over the Vandalia Railroad was, therefore, never in East St. Louis for shipment over the Vandalia and was not loaded in East St. Louis.

The mere fact that the shippers of the stock delivered it to the Conlogue Railroad for delivery to the Vandalia and that in making this delivery the stock *passed through* East St. Louis would not surely give Struble the right to claim the loading of it.

Nor does the fact that this stock from the National yards was billed from East St. Louis and freight charged on it from East St. Louis change the aspect of the case.

It was delivered to the Vandalia at East St. Louis by a connecting road, all loaded and ready for transportation, and of course the plaintiff in error billed it from the point it was received and charged freight from that point.

It is clear that when the stock loaded at the National

yards was delivered to the plaintiff in error ready for shipment, the plaintiff in error would have no right to take it to the Struble yards, unload it and then load it again before taking it East.

This plainly illustrates the proposition that the stock was never in East St. Louis to be loaded for transportation over the Vandalia Road and did not, therefore, come within the provisions of the contract with Struble.

I respectfully insist that if, under the contract, Struble was not entitled to load stock at the National yards, the mere fact that the stock loaded at those yards for transportation over the Vandalia road whilst in transit *passed through* East St. Louis would not alter the obligation of the contract.

In view of the manifest errors pointed out in this brief the plaintiff in error confidently asks a reversal of the judgment rendered against it in the Court below.

I feel justified in saying that a careful inspection of the record will convince this Court that the result of the trial below is wrong and a manifest injustice to the plaintiff in error.

The verdict of the jury is entirely beyond comprehension, and cannot be reconciled in any possible way with the testimony.

With the highest respect for the learned Judges who presided at the trial in the Court below, I feel constrained to suggest that the jury evidently suffered from the same confusion that is so prominent in the instructions of the Court, and as a matter of course finally reached a verdict in direct conflict with the law and the evidence.

Respectfully submitted,

JNO. G. WILLIAMS,

Attorney for Plaintiff in Error.

Jno G. Bowman
Of Counsel.

109-381

Supreme Court of the U. S.

Terre Haute and Indianapolis Railroad Company.
vs.
Isaac J. Struble.

JEFF CHANDLER.
Attorney for Struble.

IN THE

Supreme Court of the U. S.

TERRE HAUTE AND INDIANAPOLIS RAILROAD COMPANY
vs.
ISAAC J. STRUBLE.

The only issues properly before the Court in this case are those which arise under the allegations of the petition, and the denials thereof in the answer. No issues springing out of the new matter in defendant's answer can be reviewed here, nor ought any errors, if any there have been committed, in respect of said issues arising from said new matter be here corrected or noticed, for the reason that all such errors are in favor of defendant below. Under the pleadings in this case, which must in this action at law be construed according to the rules of practice of Missouri, no issues can be made upon allegations in an answer, (other than denials of plaintiff's cause of action, as set forth in his petition,) unless the cause of action, as so set forth in the petition, be first confessed in the answer. In other words, defendant cannot, under the Missouri practice, in the same answer, deny and confess and avoid plaintiff's cause of action. Defendant's pleas must be consistent. All the allegations, therefore, in defendant's answer, which by implication *concede* the existence of the contract sued on, and aver matter to avoid it, are *dead matter*. No issue can in

this case be raised on such allegations; nor can any errors, if any, arising from or growing out of said allegations be considered in this cause.

"A fact which merely negatives the averments of the petition is not new matter, and need not be replied to. Moreover, an answer setting up new matter by way of defence should *confess and avoid* the plaintiff's cause of action."

Bauer *vs.* Wagner, 39 Mo., 385;
State of Missouri, to use of Demuth, *vs.* Williams et al., 48 Mo., 212.

Pleading conditionally or in the alternative is not allowable, and should be avoided.

In Gale *vs.* Capern, 1 Adolph & El., 102, a replication "that the said supposed debt and set-off did not accrue within six years," was held virtually to admit that the action had once accrued, as alleged.

In Margaret *v.* Boys, 4 Adolph & El., 489, a plea that "the supposed debt, if any such there be, did not accrue or become due to the plaintiff at any time within six years," was held bad on special demurrer, because it did not fully confess and avoid the cause of action.

Bauer *vs.* Wagner, 39 Mo., 387.

All allegations about the forfeiture of the title of Struble to his yards, and their distance from the track of defendant company, and whether it was possible or impossible to carry out the contract in suit, were not matters to be considered in this case, the contract itself being denied.

On page 18 of record appears a motion of plaintiff, requiring defendant to reform his answer, so as to exclude all these matters from the case. This motion was overruled against plaintiff's objection. This was an error in

defendant's favor, and all errors, if any, relating to that aspect of the case, are errors of his own seeking, and can not be here urged by defendant to reverse the judgment rendered below.

The question of jurisdiction, which defendant seeks to make, has nothing in it. This suit was instituted and summons served under the law of Missouri, enacted in 1877, which provides that "all railroad corporations that own or operate roads terminating opposite to any point in this State, and which have offices or places of business this State, shall be sued in the same manner as railroad corporations chartered by this State.

McNichol *vs.* W. S. Merch's Reporting Agency, 74 Mo., 466.;

Railroad Co. *vs.* Harris, 12 Wallace, 65.

I.

The only questions then before this court are, *first*, did the court below instruct properly upon the issues of contract or no contract; *secondly*, was the charge as to the alleged breach of contract proper; and, *thirdly*, did the court correctly declare the rule of damages.

It was shown that the president of defendant signed the contract for defendant, and it is admitted (page 23) that he was the chief executive officer of defendant company.

This contract was operated under for three years. The business under it was so considerable that special blanks and books were kept for it. The business and extent of it appeared on the defendants books.

See Record, page 34.

No authority of the board of directors was necessary to authorize the president to make the contract.

Eureka Co. *vs.* Baily Co., 11 Wallace, 491.

On page 78 of record it will be seen that defendant's witness, Stevens, says that Mr. McKeen was then (at the time of the trial of the cause) president of defendant company. He was not called, though then at Terre Haute exercising the duties of president, to dispute either his signature to the contract sued on, or to deny his authority to bind the company, or to dispute the testimony of Struble.

It seems almost like trifling with the court to ask it to doubt the authority of the president of defendant to bind the company, when that president was still, at the time of the suit, acting as such and was not called as a witness to deny plaintiff's allegations or testimony.

Mr. Hibbard, who is also not called by defendant, is shown to have been daily cognizant of the operations of Struble under the contract for three years. Mr. Hibbard, who is shown (pages 32 and 34, Record to, have been general freight agent of defendant, and who "had everything to do with it," fixing rates, &c., is not called. Mr. Hibbard went to Terre Haute with plaintiff to get the contract sued on signed, (page 32,) and saw it signed, (page 56.) Dr. Stennett wrote the contract, (page 32.) He is not called by defendant. The officers and agents of the defendant company, who had personal knowledge of the making of the contract sued on and the operations of it after it was made, were McKeen, president; Hibbard, general freight agent, who saw it signed, (page 56;) Bacon, local agent at East St. Louis; Dr. Stennett, who acted for defendant and the Illinois Central Railroad at that point. None of these were called by defendant to deny the testimony of Mr. Struble and Mr. Menzie.

On page 35 a blank is given in evidence furnished by defendant company to Struble, to be put on the cars.

In said blank the yards of Struble are recognized in connection with the business of defendant company.

On page 40 General Manager Stevens introduces Cox, Struble's agent, as connected with *our* (defendants') stock-yards.

This contract continued in force three years or more, the company paying the rates therein fixed for loading, unloading, and bedding live-stock.

McKeen's authority, as president, to sign the contract sued on is to be presumed.

Wash. Mut. Fire Ins. Co. *vs.* St. Mary's Seminary, 52 Mo., 491–2.

II.

Plaintiff was prevented by defendant from carrying out his contract. There is no evidence in this case that shippers or owners directed their stock not to be taken to Struble's yards, or not to be loaded by him at the national yards or elsewhere.

The evidence is to the contrary. On page 60 witness Menzie says: "I said that stock agents directed where to take the stock to be loaded."

On page 84, N. S. McKeen, witness for defendant, says; "The local agents on the line of the road load the stock that comes in. They have charge of it at the stations on the road. I don't know how stock that comes in is billed. It goes to the national stock yards *by direction of the local agents.* It is there unloaded by the stock yards' company."

N. P. Anderson says; "It is unloaded (page 84) at the national stock yards by the national stock company *under the direction of the road that takes it out*"

Witness further says, (page 87:) "Stock coming over the *western roads* generally is billed to *St. Louis*, (*not East St. Louis,*) and stops there."

Witness Frederick, (page 72,) says: "The other roads objected to Struble acting a stock agent for Vandalia, defendant, and he resigned and one *Harris* was appointed. * * Stock agents were at our yards and any place they could find stock *soliciting shipments* over their roads."

The testimony in the case shows that all western stock not billed through beyond St. Louis to some point east stopped at the yards in *St. Louis*. That local agents of the various roads operating east from *East* St. Louis, a point in the State of Illinois opposite the city of St. Louis, in Missouri, (there being at that time no bridge over the Mississippi river at that point,) solicited stock for shipment from the stock yards in St. Louis, and had such stock sent from the St. Louis yards to the yards in *East* St. Louis, selected by such local railroad agent; that in no case is it shown that the shipper or owner billed his stock to any particular yard or ordered that his stock be loaded or unloaded at any particular yard. The whole matter was left with the *local agents* of the road over which the stock passed or was to be shipped.

At the time the contract in suit was executed there were no facilities for handling live stock at *East* St. Louis.

III.

Witness Frederick, for defendant, says, (page 71:) "When we wanted a location for these yards, (speaking of plaintiff's yards,) the Vandalia railroad had no good place to load cattle, and we built these yards to get a place *for them* to load to advantage and to get as near the river as possible."

On page 72, same witness says: "This yard was to be built for the Vandalia, (defendant.")

Question. "To accommodate them in the shipment of stock and the care of stock while there at East St. Louis?"

Answer. "Yes, sir."

On page 87, defendant's witness, Anderson says: "There is no competition now at the National Stock between the railroads for shipping stock east They have a pooling arrangement. Before that arrangement the best man won."

The story of this transaction is a very plain one. Struble built the yard at a time when the defendant company had no place to keep or care for live stock (page 33.) While his were the only yards, the local agents of defendant carried out the contract to send stock to Struble's yards (page 61.) Three years afterwards the National stock yards were built. A pool was formed among the railroads, whereby further competition was unnecessary; a list of prices agreed upon to be charged by all alike; and thereupon the same local agents solicited all the stock for the National Stock Yards, and Mr. Struble was gently but firmly frozen out. Mr. Hibbard, general freight agent, refused to let Mr. Struble's men load stock for defendant (page 59.) Mr. McKeen, president, also refused to carry out the contract in September, 1873, (page 34.) Mr. Bacon, local agent, who had control of the matter, as station agent, also refused (page 57.)

After reaping the benefit of plaintiff's capital for three years, to promote the business of defendant, it is suddenly discovered that some sensitive principle of public policy restrains defendant from further observing its business obligations; that, some how or other, the arrangement made with Struble for ten years is in restraint of trade; that in the opinion of defendant perfect

commercial freedom is only possible by means of a pool, whereby he who transports merchandise may close all commercial channels against the shipper till such time as the shipper yields to the carrier the difference between the carrying prices fixed by the principles of competition and the prices fixed by the pool. Defendant thereupon turns the activities of all its agencies toward the pool, represented by the new yards, and refuses further to recognize plaintiff. For thirty days after the National stocks were finished, plaintiff loaded all of defendant's live stock, which was loaded at the said yards as well as elsewhere in East St. Louis. There never was any disagreement between the parties to the contract, while it was in operation, about its meaning. Even at the time work was suspended under it, neither the president, nor any one acting for defendant, denied plaintiff's right, by the *terms of the contract, to load at the National yards.* The defendant simply refused to carry out the contract without explanation. Struble, in his testimony, (page 34) says:

"I saw Mr. McKeen about this matter along in September at Pittsburg. I told him that they had refused to give us the stock to load, and also refused to pay for it. He gave me no satisfaction; said that he could not help it, and about pay said they were poor. I met him at Pittsburg the forepart of September, 1873. I was ready to do all the business we had at that time. My yards were sufficient to do all the business of this company. I never had any complaint made to me. * * I was ready and willing to go on, and had force sufficient until they refused me."

In all the testimony of this case there appears to be no dispute about the construction to be put on the contract. No explanation is given why it was broken. No claim is made by Mr. McKeen when he is notified that Struble was not allowed to load live stock; that there

was no contract; nor that the contract did not allow him to load there, or that the owners of stock controlled the loading. The issue raised in the pleadings of contract or no contract is an after thought. That defense is selected for the reason that none other is available. This issue rests on a discarded technicality.

IV.

The issue which defendant tries to make (by inconsistent pleadings) that the title of plaintiff to his yards was forfeited by reason of the non-payment of rent called for by plaintiff's lease cannot avail defendant in this action under the evidence, even though such issue were properly raised; for it appears, (page 69,) that the forfeiture of the lease was occasioned by the failure and refusal of defendant to carry out his contract with Struble, and the failure to pay Struble for loading live stock. Such failure of payment was a sufficient excuse of itself to refuse to go on with the contract, as it, under the evidence, took away the ability of Struble to pay such rent.

Canal Company v. Gordon, 6 Wallace, 561.

Up to the time of defendant's breach of the contract there was no forfeiture and defendant cannot utilize a subsequent failure of plaintiff to pay rent as a defense to an action on a contract first broken by defendant, and which breach brought about the forfeiture.

The rule of damage was properly declared by the court.

U. S. v. Speed, 8 Wall. 84.

V.

It is submitted that the record shows that the contract was entered into as alleged; that plaintiff was able

and willing to perform it and did perform it so long as he was permitted to by defendant; that defendant refused to keep it, and that no excuse is now or has been given by defendant for violating the contract.

It is further submitted that the only error in the record of this case, for which the case ought to be reversed, is the error committed by the court against the right of plaintiff in engrafting an exception and limitation on the contract which is not among the terms of the contract itself. Defendant agreed to give to Struble for nine years the loading of all the live stock transported by it from East St. Louis, and to pay two dollars per car therefor.

The Court charged the jury:

"I think it should be considered as applying to live stock, the loading of which defendant could control."

This qualification of the contract is justified by no principle of law, and rests on no evidence in the case. Defendant could and did control the loading of all live stock shipped by it. Even if the stock, or some of it, had to be loaded at the National Stock Yards, plaintiff had the right to have it loaded there at the most favorable rates. There is no evidence that plaintiff could not, if defendant had shown a willingness to carry out the contract, have made a profit out of the loading at two dollars a car, after deducting National Stock Yards rates for loading. The testimony of witness Knox, page 91, means, if it means anything, that the National Stock Yards Company would not have objected to the loading of live stock at their yards by plaintiff for defendant, if defendant had not made the objection.

He says:

"*The Vandalia Railroad did not seek to control the loading of stock at the National Stock Yards.*"

This shows that defendant never tried to have their contract with Struble carried out, by demanding that Struble load the cars there.

This witness further says, on cross-examination, (page 91:)

"If Mr. Struble wanted to load them, we would load for him, but we would make a charge for it."

So that it is proved by defendant's own witnesses, that so far as the National Stock Yards Company was concerned, Struble could have controlled the loading there if defendant had not objected.

It is a fair inference that defendant excluded Struble from the benefits of his contract, because they got better rates from others, and that their local agents worked in the interest of the National Stock Yards for that reason.

Under the proof in this case, it is claimed by plaintiff that the Court below should have instructed the jury that he was entitled to recover under the rule of damages laid down by the Court for the full term of the contract, and that the qualification to the contract put on it by the Court, above set forth, should have been omitted upon all the issues of fact the jury have found for plaintiff below, they have found that the contract was entered into as alleged; that plaintiff below carried it out until prevented by defendant from going on with it; that defendant did prevent its complete execution; that plaintiff sustained damage upon all these issues; the jury were properly instructed by the Court; the sole error in the case is the one complained of by Struble in the other brief herewith filed.

JEFF. CHANDLER,

Att'y for Struble.